

No. 2271

United States
Circuit Court of Appeals

For the Ninth Circuit.

J. J. COLE, Trustee, and WILLIAM A. GIL-
MORE, Intervenor,

Appellants,

VS.

FRANK H. WASKEY,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court
for the District of Alaska, Second Division.

FILED

AUG 11 1913

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INDEX OF PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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[Names and Addresses of] Attorneys of Record.

J. J. CHAMBERS, Nome, Alaska,
Plaintiff, in *Propria Persona*.

ALBERT FINK, San Francisco, Cal., IRA D. OR-
TON, Seattle, Wash., O. D. COCHRAN, Nome,
Alaska,

Attorneys for Petitioner and Defendant
Waskey.

G. J. LOMEN, Nome, Alaska, WILLIAM A. GIL-
MORE, Nome, Alaska,
Attorneys for Trustee and Intervenor.

—

*In the District Court for the District of Alaska, Sec-
ond Division.*

No. —.

J. J. CHAMBERS,

Plaintiff,

vs.

ANDREW EADIE, J. POTTER WHITTREN and
FRANK H. WASKEY,

Defendants.

Second Amended Complaint.

Comes now the plaintiff in the above-entitled ac-
tion, and by leave of Court first had and obtained,
makes this his second amended complaint and for
cause of action alleges:

1. That at all the times and dates herein men-
tioned, plaintiff was and is owner in fee and en-
titled to the possession of the following described
property, to wit:

An undivided one-half ($1\frac{1}{2}$) interest of that certain placer mining claim named and known as the Bon Voyage, situated in the Cape Nome Recording District, District of Alaska, and described by metes and bounds as follows, to wit: Commencing at the initial stake which is situated about 1500 feet in a southerly direction from the upper end line of Creek claim No. 3 Below on Newton Gulch, a tributary of Dry Creek, said stake being in the north end line of said claim; thence 330 feet in a westerly direction and parallel to said Newton Gulch to corner stake No. 1; thence 1320 feet in a southerly direction and at right angles to corner stake No. 2; thence 660 feet in an easterly direction to corner stake No. 3; thence 1320 feet in a northerly direction to corner stake No. 4; thence 330 feet to the initial stake or place of beginning; said claim being situate on the divide known as Gold Hill, which is between Newton Gulch and Nome River, and is next to a certain bench claim known as Gold Hill Claim No. 1, and contains about 20 acres of placer mining ground.

That plaintiff's estate in said property is under [1*] and by virtue of a location thereof by one J. Potter Whittren, one of the above defendants, made in the year 1902, and by mesne conveyance, from said defendant Whittren, for this plaintiff, subsequent to last mentioned date.

2. That the defendants wrongfully and unlawfully withhold possession of said premises from plaintiff and have extracted a large amount of gold and other precious metals from said claim to the

*Page number appearing at foot of page of original certified Record.

plaintiff's damage in the sum of seventy-five thousand dollars (\$75,000).

WHEREFORE, plaintiff prays judgment that he is the owner of an undivided one-half ($1\frac{1}{2}$) interest in said claim and for possession thereof, and for damages in the sum of seventy-five thousand dollars (\$75,000), and for his costs and disbursements included in this action.

C. D. MURANE,
Attorney for Plaintiff.

United States of America,
District of Alaska,—ss.

J. J. Chambers, being first duly sworn, deposes and says:

That he is the plaintiff in the above-entitled action; that he has read the foregoing second amended complaint, knows the contents thereof and the matters therein stated are true as he verily believes.

J. J. CHAMBERS.

Subscribed and sworn to before me, this 20 day of November, 1906.

[Notarial Seal] GEO. D. SCHOFIELD,
Notary Public. [2]

Service of copy of the foregoing second amended complaint, received this 20 day of November, 1906.

IRA D. ORTON,
For Waskey.

O. D. COCHRAN,
Attorney for Defendant.

[Endorsed]: No. 1629. In the District Court, District of Alaska, Second Division. J. J. Chambers,

Plaintiff, vs. Andrew Eadie et al., Defendants.
Second Amended Complaint. Filed in the office of
the Clerk of the Dist. Court of Alaska, Second Division,
at Nome. Nov. 23, 1906. Jno. H. Dunn, Clerk.
By —————, Deputy. C. D. Murane, Attorney
for Plaintiff. McB. [3]

**[Answer of Frank H. Waskey to Second Amended
Complaint.]**

District Court, District of Alaska, Second Division.
J. J. CHAMBERS,

Plaintiff,

vs.

ANDREW EADIE, J. POTTER WHITTREN and
FRANK H. WASKEY,

Defendants.

Comes now Frank H. Waskey, one of the defendants in the above-entitled action, and for answer to plaintiff's second amended complaint denies and alleges as follows:

I.

Denies each and every allegation of plaintiff's second amended complaint.

II.

And for a further, separate and affirmative answer said defendant Waskey alleges:

1. That the Bon Voyage Claim mentioned and described in plaintiff's said second amended complaint was located as a placer mining claim by the defendant Whittren on the 1st day of January, 1902;

that from the 1st day of January, 1902, until the 24th day of September, 1905, the said Whittren continued to be the owner in fee of said claim; that on the said 24th day of September, 1905, the said Whittren, for a valuable consideration, by deed [4] in writing, granted, sold and conveyed to the defendant Eadie an undivided one-half interest in said claim, and ever since the said last mentioned date the said Whittren and the said Eadie have been, and they now are, the sole owners of said claim as tenants in common.

2. That on the 11th day of June, 1906, the said Whittren and the said Eadie were so the owners of said claim as tenants in common, and were then and there in the sole, quiet and exclusive possession of the same, and on said date the said Whittren and Eadie did by an instrument in writing lease, let and demise a portion of said claim to the defendant Waskey for the term to commence at the execution of said lease and ending on the 1st day of June, 1908; that the portion of said claim so leased, demised and let to this defendant is bounded and described as follows:

All the following described lands and premises, situate in Cape Nome Mining and Recording District, of Alaska, to wit: Commencing at the southwest corner stake of the Bon Voyage Placer Mining Claim; thence northerly along the westerly boundary line of said mining claim 1320 feet to the northwest corner thereof; thence easterly along the northerly boundary line of said mining claim 220 feet; thence southerly 1320 feet to the southerly boundary line

of said mining claim; thence westerly 220 feet to the point and place of beginning; being a part of the said Bon · Voyage Placer Mining Claim, the location notice whereof is of record in the office of the Recorder of said Cape Nome Recording District in Book 99, at page 296, of the Records of said District.

That immediately upon the execution of said lease the defendant Waskey entered upon said portion of said claim and commenced to mine and prospect the same for gold in accordance with the terms of said lease and is still so engaged; that the defendant Waskey has at all times kept and [5] performed, and is now keeping and performing all the terms of said lease on his part to be kept and performed; that defendant made and entered into said lease in good faith, for a valuable consideration, without any knowledge or notice whatever of plaintiff's alleged interest in said claim, and defendant commenced and continued to work, mine and operate said claim for a long period of time, in like good faith, at great expense and without any knowledge or notice of plaintiff's alleged interest in said claim.

That said lease hereinbefore referred to was by this defendant on August 22d, 1906, filed for record in the office of the Recorder of the Cape Nome Recording District, District of Alaska, within which said claim was and is situated, and was thereafter duly recorded in Vol. 164 at page 133 of the Records of said District; that a true copy of said lease is hereunto annexed, marked Exhibit "A," and made a part of this answer.

3. The defendant Waskey further alleges that

afterwards, to wit, on the 20th day of June, 1906, the said Whittren and the said Eadie were so the owners of said claim as tenants in common and were then and there, together with this defendant as lessee of the portion thereof hereinbefore described, in the sole, quiet and exclusive possession of the said claim, and on the said 20th day of June, 1906, the said Whittren, Eadie and this defendant made and entered into a certain lease and contract of the remaining portion of said mine for the term commencing on said 20th day of June, 1906, and ending on the 20th day of June, 1908; that the remaining portion of said mine described in said lease and contract last hereinabove referred to is described as follows:

The easterly 440 feet of said mining claim, being all of the said claim not heretofore leased by the said Eadie and the said Whittren to the said Waskey.
[6]

That immediately upon the execution of said contract and lease, the defendants Eadie and Waskey entered upon said portion of said claim described therein and commenced to mine and prospect the same for gold in accordance with the terms of said lease and they are still so engaged; that the defendants Waskey and Eadie have at all times kept and performed and are now keeping and performing all the terms of said contract and lease on their part to be kept and performed.

That the said Waskey made and entered into said contract and lease in good faith, for a valuable consideration, without any knowledge or notice whatever of plaintiff's alleged interest in said claim, and the

said defendant Waskey commenced and continued to work, mine and operate said claim and the portion described in said contract and lease last hereinbefore referred to for a long period of time, in like good faith, at great expense and without any knowledge or notice of plaintiff's alleged interest in said claim.

That said lease and contract last hereinbefore referred to was by this defendant on the 30th day of August, 1906, filed for record in the office of the Recorder of the Cape Nome Recording District, District of Alaska, within which said claim was and is situated, and was thereafter duly recorded in Vol. 164 at page 138 of the Records of said District; that a true copy of said contract and lease is hereto annexed, marked Exhibit "B" and made a part of this answer.

4. This defendant Waskey further alleges that he has hereinbefore set forth the nature and duration of his estate in the real property described in plaintiff's complaint and of his license and right to the possession thereof, and further alleges that he is in the possession of said property under and by virtue and pursuant to the two leases and contracts, Exhibits "A" and "B," hereinbefore mentioned. [7]

WHEREFORE, having fully answered this defendant prays to go hence dismissed with judgment for his costs.

ALBERT FINK,

IRA D. ORTON,

Attorneys for Defendant Frank H. Waskey.

United States of America,
District of Alaska,—ss.

Ira D. Orton, being first duly sworn, deposes and says: That he is the attorney for Frank H. Waskey, one of the defendant in the above-entitled action; that he has read the above and foregoing answer and knows the contents thereof and believes the same to be true; that the reason this affidavit is made by affiant instead of the said Frank H. Waskey is because the said Frank H. Waskey is absent from the District of Alaska and for that reason unable and incapable of making this verification.

IRA D. ORTON.

Subscribed and sworn to before me, this 14th day of January, 1907.

[Notarial Seal] IDA G. CHAQUETTE,
Notary Public in and for the District of Alaska,
Residing at Nome. [8]

[**Exhibit "A" to Answer of Frank H. Waskey to
Second Amended Complaint — Lease, Dated
June 11, 1906, Andrew Eadie et al. and F. H.
Waskey.**]

#36729.

THIS INDENTURE, made this eleventh day of June, in the year nineteen hundred and six, between ANDREW EADIE and J. POTTER WHITTREN, both of Nome, Alaska, lessors, and F. H. WASKEY, of the same place, lessee, WITNESSETH:

That the said lessors, for and in consideration of the rents, royalties, covenants, and agreements here-

inafter reserved and contained and by the said lessee to be paid, kept, and performed, do hereby lease, demise, and let unto the said lessee all the following described lands and premises, situate in Cape Nome Mining and Recording District, District of Alaska, to-wit: Commencing at the southwest corner stake of the BON VOYAGE Placer Mining Claim; thence northerly along the westerly boundary line of said mining claim 1320 feet to the northwest corner thereof; thence easterly along the northerly boundary line of said mining claim 220 feet; thence southerly 1320 feet to the southerly boundary line of said mining claim; thence westerly 20 feet to the point and place of beginning; being a part of the said BON VOYAGE Placer Mining Claim, the location notice whereof is of record in the office of the recorder of said Cape Nome Recording District in book 99, at page 296, of the records of the said district.

TO HAVE AND TO HOLD all and singular the said demised premises, together with the appurtenances, unto the said lessee for the term commencing on the date hereof and expiring at noon on the first day of June, nineteen hundred and eight, unless sooner forfeited or determined through the violation by the said lessee of any covenant or agreement [9] hereinafter contained and by him to be kept and performed.

And in consideration of such demise and lease the said lessee does covenant and agree with the said lessors as follows, to wit:

1. To enter upon the said premises within five days from the date hereof and thereafter to pros-

pect, work, and mine the same in good and miner-like manner, so as to take out the greatest possible amount of gold and gold-dust therefrom, with due regard to the continued future working of the said mining claim and the preservation of the same as a workable mine, and so to prospect, work and mine the said premises steadily and continuously during the term of this lease; cessation of labor for a period of ten days to be deemed a violation of this agreement.

2. To properly timber all shafts and to keep all shafts, tunnels, drifts, and stopes clear and in good and safe condition.

3. To allow the said lessors, and their agent or agents, at all times, to enter upon and into all parts of the said premises, for purposes of inspection, and to be present and to assist at all cleanups, the retorting of the amalgam, and the weighing of the retort.

4. To give to the said lessors, at Nome, Alaska, at least ten hours' notice of each and every cleanup, and to make no cleanup without giving such notice.

5. To make and file for record an affidavit of the performance of the required annual labor upon the said mining claim, during each calendar year of the term of this lease.

6. To pay to the said lessors, as royalty, thirty-five per centum (35%) of all gold, gold-dust, and other precious minerals and metals mined or extracted from the said premises during the term of this lease and to pay and deliver to the [10] said lessors such royalty out of, and immediately after, each and every cleanup.

7. To allow no person or persons not in privity with the said parties hereto to take or hold possession of the said premises, or any part thereof, under any pretense whatever, during the said term.

8. Not to assign this lease, or any interest herein, and not to sublet the said premises, or any part thereof, without the written consent of the said lessors.

9. To quit and deliver up to the said lessors the possession of the said premises, X.x, in good order and condition for continued future mining, without demand or further notice, on said first day of June, 1906, or at any time previous upon demand for forfeiture.

It is expressly agreed that, upon the violation by the said lessee of any covenant or agreement herein contained, this lease, and the term hereof, shall, at the option of the lessors, become forfeited and determined, and the said lessors may at once enter into the possession of the said premises and remove any and all persons found thereon.

Each and every part and covenant hereof shall extend to and be binding upon the heirs, exêcutors, administrators, and assigns of the lessors, and, at the option of the lessors, the executors, administrators, and assigns of the said lessee.

IN WITNESS WHEREOF, the said parties have

hereunto set their hands and seals the day and year first above written.

Done in triplicate.

ANDREW EADIE. [Seal]

J. POTTER WHITTREN. [Seal]

F. H. WASKEY. [Seal]

Signed, sealed and delivered in the presence of:

F. E. FULLER.

A. G. BLAKE. [11]

District of Alaska,

Cape Nome Precinct,—ss.

THIS IS TO CERTIFY, that on this 11th day of June, A. D. 1906, before me, the undersigned, a Notary Public in and for the District aforesaid, duly commissioned and qualified, personally came Andrew Eadie, J. Potter Whittren and F. H. Waskey, to me known and known to be the same persons described in and whose names are subscribed to the within instrument, and acknowledged that they executed the same freely and voluntarily.

WITNESS my hand and notarial seal this 11th day of June, A. D. 1906.

[Notarial Seal]

F. E. FULLER,

Notary Public for Alaska.

Filed for Record Aug. 22, 1906, 2:20 P. M. Request of F. H. Waskey.

F. E. FULLER,

Recorder.

Deputy.

United States of America,
District of Alaska,
Precinct of Cape Nome,—ss.

I, F. E. Fuller, United States Commissioner and Ex-officio Recorder in and for the Precinct of Cape Nome in the Second Judicial Division of the District of Alaska, do hereby certify that the above and foregoing is a true, full and complete copy of Instrument numbered 36729, the same being agreement between Andrew Eadie, and J. Potter Whittren, lessors, and F. H. Waskey, lessee, as the same appears of record in Volume 164, at page 133 thereof, of the records of my office.

WITNESS my hand and the seal of the said office this 12th day of October, 1906.

[Seal]

F. E. FULLER,
Recorder.

By F. R. Cowden,
Deputy. [12]

[Exhibit "B" to Answer of Frank H. Waskey to
Second Amended Complaint — Contract and
Lease, Dated June 20, 1906, Andrew Eadie et
al. and F. H. Waskey.]

#36869.

AGREEMENT.

THIS AGREEMENT, Made this 20th day of June, in the year nineteen hundred and six, By and Between ANDREW EADIE, J. POTTER WHITTREN, and F. H. WASKEY, all of Nome, Alska,

WITNESSETH:

WHEREAS, the said Eadie and Whittren are the

owners of the BON VOYAGE Placer Mining Claim, situate in Cape Nome Mining District, Alaska, the location notice whereof is of record in the office of the Recorder of the Cape Nome Recording District, in book 99, at page 296 of the Records of said District;

AND WHEREAS, the said Eadie and Waskey desire to work and mine the Easterly 440 feet of said mining claim, being all of the said claim not heretofore leased by the said Eadie and Whittren to the said Waskey:

NOW, THEREFORE, in consideration of the premises and of the sum of One (\$1.00) Dollar, by the said parties paid, each to the other, the receipt whereof is hereby acknowledged, and of the covenants and agreements hereinafter contained, it is agreed as follows:

The said Eadie and Waskey agree to enter upon the said premises within one days from the date hereof, and thereafter to prospect, work and mine the same in good and miner-like manner so as to take out the greatest amount of gold and gold-dust therefrom, with due regard to the continued future working of the said premises and the preservation of the same as a workable mine, and so to prospect, work and mine the said premises steadily and continuously for the full term of two (2) years from the date hereof, or until said premises shall have been thoroughly and completely mined and worked out; [13] cessation of labor for a period of ten (10) days to be deemed a violation of this agreement.

To properly timber all shafts and to keep all

shafts, tunnels, drifts and stopes clear and in good and safe condition;

To allow the said Whittren or his agent at all times to enter upon and into all parts of the said premises for purposes of inspection, and to be present and to assist at all cleanups, the retorting of the amalgam, and the weighing of the retort, and to give said Whittren or his agent due notice of each and every cleanup.

IT IS AGREED that of all the gold, gold-dust and other precious minerals and metals mined or extracted from the said premises by the said Eadie and Waskey, under this agreement, one-eighth ($\frac{1}{8}$) part shall be paid and delivered to said Whittren immediately after each and every cleanup, and one-eighth ($\frac{1}{8}$) part to the said Eadie, and the remainder shall be retained by, and equally divided between, the said Waskey and Eadie, after paying from such remainder all costs and expenses of mining and operating under this agreement; the expense of first locating pay, however, to be borne solely by said Waskey.

IN WITNESS WHEREOF, the said parties have hereunto set their hands and seals in triplicate, the day and year first above written.

J. POTTER WHITTREN. [Seal]

ANDREW EADIE. [Seal]

F. H. WASKEY. [Seal]

Signed, sealed and delivered in the presence of:

P. D. OVERFIELD. [14]

District of Alaska,
Cape Nome Precinct,—ss.

THIS IS TO CERTIFY that on this 30th day of

August, A. D. 1906, before me, the undersigned, a Notary Public in and for the District aforesaid, duly commissioned and qualified, personally came Andrew Eadie, J. Potter Whittren and F. H. Waskey, to me known and known to be the same persons described in and whose names are subscribed to the within instrument, and acknowledged that they executed the same freely and voluntarily.

WITNESS my hand and notarial seal this 30th day of August, A. D. 1906.

[Notarial Seal]

F. E. FULLER,

Notary Public for Alaska.

Filed for Record Aug. 30, 1906, 2:50 P. M., request of F. H. Waskey.

F. E. FULLER,

Recorder.

Deputy.

(Vol. 164, page 138.)

United States of America,
District of Alaska,
Precinct of Cape Nome,—ss.

I, F. E. Fuller, United States Commissioner and Ex-officio Recorder in and for the Precinct of Cape Nome in the Second Judicial Division of the District of Alaska, do hereby certify that the above and foregoing is a true, full and complete copy of Instrument numbered 36869, the same being agreement between Andrew Eadie, J. Potter Whittren and F. H. Waskey, as the same appears of record in Volume 164, at page 138 thereof, of the records of my office.

WITNESS my hand and the seal of the said office
this 12th day of October, 1906.

[Seal]

F. E. FULLER,

Recorder.

By F. R. Cowden,

Deputy. [15]

United States of America,
District of Alaska,—ss.

Due service of the within answer is hereby accepted at Nome, Alaska, this 14 day of January, 1907, by receiving a copy thereof.

C. D. MURANE,

Attorney for Plff.

[Endorsed]: #1629. Original. In the District Court for the District of Alaska, Second Division. J. J. Chambers, Plaintiff, vs. Andrew Eadie et al., Defendants. Answer of Waskey to Second Amended Complaint. Filed in the Office of the Clerk of the Dist. Court of Alaska, Second Division, at Nome. Jan. 15, 1907. Jno. H. Dunn, Clerk. By ———, Deputy. Ira D. Orton, Attorney for Deft. F. H. Waskey. [16]

*In the District Court for the District of Alaska,
Second Division.*

No. —.

J. J. CHAMBERS,

Plaintiff,

vs.

ANDREW EADIE, J. POTTER WHITTREN and
FRANK H. WASKEY,

Defendants.

Reply.

Comes now the plaintiff J. J. Chambers and for reply to the separate answer of the defendant Frank H. Waskey to plaintiff's second amended complaint, denies and alleges as follows:

I.

For reply to Paragraph I to defendant's further separate and affirmative answer and defense, plaintiff denies each and every allegation contained in said paragraph, except that the Bon Voyage Claim was located as a placer mining claim by the defendant Whittren on the 1st day of January, 1902, and that the said defendant Whittren for a valuable consideration by deed in writing, granted, sold and conveyed to the defendant Eadie an undivided one-half ($\frac{1}{2}$) interest in said claim.

II.

For reply to the second paragraph of said answer, plaintiff denies any knowledge or information sufficient to form a belief as to the matters contained in said paragraph, and therefore denies the allegations of said paragraph and the whole thereof, except that plaintiff admits that said [17] Bon Voyage Claim is situated in the Cape Nome Recording District, District of Alaska.

III.

For reply to Paragraph III of said answer of defendant Waskey, plaintiff denies any knowledge or information sufficient to form a belief as the truth of the matters therein stated and therefore denies each and every allegation contained in said para-

graph, except that said claim is situated in the District of Alaska.

IV.

For reply to Paragraph IV of said answer of the defendant Waskey, plaintiff denies any knowledge or information sufficient to form a belief as to the truth of the matters therein stated, and therefore denies each and every allegation contained in said paragraph.

WHEREFORE, plaintiff, having fully replied to the said answer of the defendant Waskey, prays judgment as he has heretofore prayed in his complaint on file herein.

C. D. MURANE,
Attorney for Plaintiff.

United States of America,
District of Alaska,—ss.

J. J. Chambers, being first duly sworn, upon his oath deposes and says: I am plaintiff in the foregoing reply, have read said reply and know the contents thereof and the matters therein stated are true as I verily believe.

J. J. CHAMBERS.

Subscribed and sworn to before me this 10 day of June, 1907.

[Notarial Seal] C. D. MURANE,
Notary Public in and for the District of Alaska,
Residing at Nome, Alaska. [18]

Service of the foregoing reply received by copy this 10th June, 1907.

IRA D. ORTON,
Atty. for Deft. Frank H. Waskey.

[Endorsed]: No. 1629. In the District Court, District of Alaska, Second Division. J. J. Chambers, Plaintiff, vs. Andrew Eadie, J. Potter Whittren and Frank H. Waskey, Defendants. Reply to Answer of Deft. Waskey. Filed in the Office of the Clerk of the Dist. Court of Alaska, Second Division, at Nome. Jun. 10, 1907. Jno. H. Dunn, Clerk. By ———, Deputy. C. D. Murane, Attorney for Plaintiff. McB. [19]

[Mandate U. S. Circuit Court of Appeals in Andrew Eadie et al. vs. J. J. Chambers, No. 1595.]

UNITED STATES OF AMERICA,—ss.

The President of the United States of America, to the Honorable the Judges of the District Court of the United States for the District of Alaska, Second Division, Greeting:

Seal Circuit Court
of Appeals
Ninth Circuit.

Whereas, lately in the District Court of the United States for the District of Alaska, Second Division, before you, or some of you, in a cause between J. J. CHAMBERS, Plaintiff, and ANDREW EADIE, J. POTTER WHITTREN, and FRANK H. WASKEY, Defendants, No. 1629, a judgment was duly filed on the 12th day of October, A. D. 1907, in favor of the said plaintiff and against the said defendants; which said judgment is of record in the said cause in the office of the Clerk of the said District Court (to which record reference is hereby made and the same is hereby expressly made a part hereof), as by the inspection of the Transcript of the Record of

the said District Court, which was brought into the United States Circuit Court of Appeals for the Ninth Circuit by virtue of a writ of error prosecuted by Andrew Eadie, J. Potter Whittren and F. H. Waskey as plaintiffs in error agreeably to the Act of Congress in such cases made and provided, fully and at large appears:

And Whereas, on the 19th day of October in the year of our Lord One Thousand, Nine Hundred and Eight the said cause came on to be heard before the said Circuit Court of Appeals, upon the said Transcript of the Record, and was duly argued and submitted:

On Consideration Whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed, with costs in favor of the defendant in error; and that the defendant in error J. J. Chambers recover against the plaintiffs in error Andrew Eadie, [20] J. Potter Whittren and F. H. Waskey, for his costs herein expended, and have execution therefor.

(July 6, 1909.)

You, therefore, are hereby commanded that such execution and further proceedings be had in the said cause as according to right and justice and the laws of the United States ought to be had, the said writ of error notwithstanding.

Witness, the Honorable MELVILLE W. FULLER, Chief Justice of the United States, the elev-

enth day of October, in the year of our Lord One Thousand Nine Hundred and Nine.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

COSTS OF DEFENDANT IN ERROR:

Certified cost of the Transcript from
the Court below.....\$
Miscellaneous Costs, U. S. Circuit
Court of Appeals.....\$ 8.70
Cost of Printing Record U. S. Cir-
cuit Court of Appeals.....\$
Attorney's Docket Fee.....\$20.00

Taxed at.....\$28.70

F. D. MONCKTON,

Clerk. [21]

BILL OF COSTS—ITEMS IN CASE No. 1595.

Costs

Item Number	Dr. Items	Dr.	Cr.	taxed in Mandate.
(1) Docketing Cause and Fil- ing Record.....		5	00	
(2) Entering 2 Appearance..		50		
(3) Entering Continuance ..				
(4) Entering 2 Order.....		40		
(5) Filing 15 Paper.....		3	75	
(6) Filing Briefs for Each Party Appearing (2)..		10	00	
(7) Filing.....				
(8) Filing.....				

(9)	Filing Argument Mr. Metson.....	5 00
(10)		
(11)	Transferring Cause on Printed Calendar (2).	2 00
(12)	Drawing, Filing and Re- cording Decree or Judg- ment.....	1 65
(13)		
(14)	Filing Petition for a Re- hearing.....	5 00
(15)		
(16)	Issuing.....	
(17)		
(18)		
(19)	Issuing Mandate, \$5.00; Costs and Copy, \$0.40..	5 40
(20)		

	Total, Miscellaneous Costs.....	38 70
(21)	Certified Cost of the Tran- script from the Court Below	
(22)		
(23)	Expense, Printing Rec-.. ord.....	
(24)		
(25)	Attorney's Docket Fee..	20.00

Item Number	Cr. Items.		
(1)	Deposit, Rule 17, (W. H. Metson)	25 00	
(2)	Filing Brief of Defend- ant in Error.....		
(3)	(C. D. Murane)....	5 00	5 00
(4)	Filing Argument (W. H. Metson)	5 00	
Total, Miscellaneous Deposits		35 00	
(5)	Certified Cost of the Tran- script from the Court Below.....		
(6)			
(7)	Expense, Printing Rec- ord.....		
(8)			
(9)	Attorney's Docket Fee..	20 00	20 00
(10)	Balance costs paid by A. H. Elliot.....	3 70	3 70
Totals....		58 70	58 70 28 70

Attest: F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

[Endorsed]: #1629. No. 1595. United States
Circuit Court of Appeals for the Ninth Circuit.
Andrew Eadie et al. vs. J. J. Chambers. Mandate
Under Rule 32. Filed in the Office of the Clerk of

the Dist. Court of Alaska, Second Division, at Nome. Oct. 28th, 1909. Jno. H. Dunn, Clerk. By _____, Deputy. D. Vol. 7. Orders and Judgments, p. 492. C.

#1629. Chambers vs. Eadie et al. Respondents' Exhibit No. 2. Sept. 3, 1912. J. A. B. [22]

*In the District Court for the District of Alaska,
Second Division.*

No. 1629.

J. J. CHAMBERS,

Plaintiff,

vs.

ANDREW EADIE, J. POTTER WHITTREN and
FRANK H. WASKEY,

Defendants.

**Order [Directing Miners and Merchants' Bank of
Nome, Alaska, to Pay Plaintiff Certain Money,
etc.]**

This matter coming on for hearing this 29th day of October, 1909, upon the application of plaintiff for an order directing the Miners' & Merchants' Bank, of Nome, Alaska, to pay to the plaintiff all moneys received and held by it from the gold-dust taken from the Bon Voyage Placer Claim, the claim in controversy in the above-entitled action, to apply on the plaintiff's judgment in the above-entitled action; and it appearing to the Court from the records and files of this case that certain amounts of gold-dust were heretofore deposited with the Miners & Merchants' Bank, of Nome, Alaska, and subse-

quently by order of this Court reduced to money and held by said Miners & Merchants' Bank, subject to the further order or orders of this Court in this action; and, it further appearing to the Court from the records of the case that on the 12th day of October, 1907, a judgment was entered in this case, decreeing and directing the said Miners & Merchants' Bank to pay the said money so held to the plaintiff to apply upon said judgment, and that thereafter a stay of execution was granted in the above-entitled action, staying the payment of the same; and, it further appearing to the Court that on the 28th day of October, 1909, the mandate of the Circuit Court of Appeals for the Ninth Circuit has been duly filed with the Clerk of [23] the above-entitled court, affirming the said judgment and decree of October 12th, 1907; and, it further appearing to the Court that plaintiff is entitled to the said money now held by said Miners & Merchants' Bank under the stipulations and orders heretofore signed and filed in this action; and the Court being otherwise fully advised in the premises,

NOW ORDERS AND DIRECTS that said Miners & Merchants' Bank of Nome, Alaska, pay to the plaintiff to apply on the said judgment all sum or sums of money received and held by it under the stipulations and orders of the above-entitled court heretofore signed and filed, said sum or sums of money so to be paid to plaintiff to apply on the said judgment of October 12th, 1907, in this action.

Done in open court this 29th day of October, 1909.

ALFRED S. MOORE,

District Judge.

[Endorsed]: No. 1629. In the District Court for the District of Alaska, Second Division. J. J. Chambers, Plaintiff, vs. Andrew Eadie et al., Defendants. Order. Filed in the Office of the Clerk of the Dist. Court of Alaska, Second Division, at Nome. Oct. 29, 1909. Jno. H. Dunn, Clerk. By Z., Deputy. William A. Gilmore, Attorney at Law, Nome, Alaska. C. Attorney for Plaintiff. Vol. 7, Orders and Judgments, p. 498.

#1629. Chambers vs. Eadie et al. Respondent's Exhibit No. 3. Sept. 3, 1912. J. A. B. [24]

**[Mandate Supreme Court of the United States in
Frank H. Waskey vs. J. J. Chambers, No. 221.]**

UNITED STATES OF AMERICA,—ss.

The President of the United States of America, to
the Honorable the Judge of the Dis-
trict Court of the United States for the
District of Alaska, Second Division,
Greeting:

Seal of the Su-
preme Court of
the United
States.

Whereas, lately in the United States Circuit Court of Appeals for the Ninth Circuit, in a cause between Andrew Eadie, J. Potter Whittren, and Frank H. Waskey, plaintiffs in error, and J. J. Chambers, defendant in error, wherein the judgment of the said Circuit Court of Appeals, entered in said cause on

the 6th day of July, A. D. 1909, is in the following words, viz.:

“This cause came on to be heard on the transcript of the record from the District Court of the United States for the District of Alaska, Second Division, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed, with costs in favor of the defendant in error; and that the defendant in error J. J. Chambers recover against the plaintiffs in error Andrew Eadie, J. Potter Whittren and F. H. Waskey, for his costs herein expended, and have execution therefor.”

as by the inspection of the transcript of the record of the said United States Circuit Court of Appeals which was brought into the SUPREME COURT OF THE UNITED STATES by virtue of a writ of certiorari granted on the petition of Frank H. Waskey, agreeably to the act of Congress, in such case made and provided, fully and at large appears.

And whereas, in the present term of October, in the year of our Lord one thousand nine hundred and eleven, the said cause came on to be heard before the said SUPREME COURT, on the said transcript of record, and was argued by counsel: [25]

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said United States Circuit Court of Appeals in this cause be, and the same is hereby, reversed with

costs; and that the said Frank H. Waskey recover against the said J. J. Chambers six hundred and sixty-two dollars, and ten cents for his costs herein expended, and have exception therefor.

And it is further ordered that this cause be, and the same is hereby, remanded to the District Court of the United States for the District of Alaska, Second Division, for further proceedings in conformity with the opinion of this Court.

May 13, 1912.

You, therefore, are hereby commanded that such execution and further proceedings be had in said cause, in conformity with the opinion and judgment of this Court, as according to right and justice, and the laws of the United States, ought to be had, the said writ of certiorari notwithstanding.

Witness, the Honorable EDWARD D. WHITE, Chief Justice of the United States, the 14th day of June, in the year of our Lord one thousand nine hundred and twelve.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

COSTS OF FRANK H. WASKEY.

Clerk.....	\$285.60
Printing Record....	\$356.50
Attorney	\$ 20.00

\$662.10

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

Costs of FRANK H. WASKEY, in No. 221.

1909, October Term—Docketing cause and filing record, \$5.00; appearance, .25; filing praecipe, .25; filing papers, .75; filing briefs, \$5.00; submission, .20; order, .20; writ, \$5.00; filing return, .25; continuance, .25.....	17.15
1910, October Term—Transfer, \$1.00; filing .25; filing briefs on motion, \$5.00; submission, .20; continuance, .25.....	6.70
1911, October Term—Transfer, \$1.00; filing receipts, .75; filing papers, \$4.00; filing briefs, \$5.00; argument, .20; judgment, \$1.00; filing same, .25; recording, .40; mandate, \$5.00; preparing record for printer, etc., \$243.75; cost of printing record, \$356.50; attorney's docket fee, \$20.00; costs and copy, .40.....	638.25
	<hr/> 662.10

Fee Book, page 22,052.

Test: JAMES H. McKENNEY,

Clerk of the Supreme Court of the United States.

[Endorsed]: #1629. File No. 22,052. Supreme Court of the United States. No. 221. October Term, 1911. Frank H. Waskey vs. J. J. Chambers. Mandate. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Aug. 28, 1912. John Sundback, Clerk. By

_____, Deputy. L. Vol. 9, Orders and Judgments, p. 515. C. [27]

[Minutes of Court—September 2, 1912.]

*In the District Court for the District of Alaska,
Second Division.*

TERM MINUTES, Special August, 1912, Term,
Beginning August 15, 1912.

Monday, September 2, 1912, at 10 A. M.

Court convened pursuant to adjournment, Hon.
THOMAS R. LYONS, District Judge, presiding.

Upon the convening of court the following proceedings were had:

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1629.

J. J. CHAMBERS

vs.

ANDREW EADIE et al.

Mr. Ira D. Orton, on behalf of defendant Frank Waskey, presented and filed motion to tax costs on appeal and affidavit in support of said motion. Thereupon the Court made an order shortening the time for hearing of said motion, setting the hearing thereof for 10 A. M. to-morrow.

Thereupon Mr. Ira D. Orton, on behalf of defendant Waskey, presented petition for an order directed to J. J. Cole and plaintiff J. J. Chambers to show cause why certain moneys now in the hands of said J. J. Cole should not be paid into the Registry of the Court. Petition filed. Order granted.

Thereupon the Court signed an order, directed to said J. J. Cole and said J. J. Chambers, to show cause as aforesaid and fixed the hearing thereof for 2 P. M. tomorrow. Order filed.

[28]

**[Petition of Frank H. Waskey for Order Directing
Payment of Moneys Into Registry of Court,
etc.]**

*In the District Court for the District of Alaska,
Second Division.*

J. J. CHAMBERS,

Plaintiff,

vs.

ANDREW EADIE, J. POTTER WHITTREN and
FRANK H. WASKEY,

Defendants.

Comes now, Frank H. Waskey, one of the defendants in the above-entitled action, and shows to the Court as follows:

1.

That heretofore, to wit, and prior to the trial of the above-entitled action, a certain stipulation was entered into between the plaintiff above named and the defendants, wherein and whereby it was stipulated and agreed that in lieu of the issuance of an injunction *pendente lite* twenty-five per cent of the gross output of the premises in controversy in this action be placed in escrow with the Miners & Merchants' Bank, at Nome, Alaska, to await the final

2.

That in pursuance to said stipulation and agreement there was prior to the trial of the above-entitled action deposited with said Miners & Merchants' Bank, by the defendants herein, gold of the value of over Fourteen Thousand Dollars. [29]

3.

That after the deposit of said gold-dust and before the trial of the above-entitled action, upon stipulation of the parties hereto, the Court made and entered an order herein as follows:

“On reading and filing the foregoing stipulation, it is hereby ordered that the Miners & Merchants' Bank of Alaska, be authorized to cause the gold-dust deposited with it subject to the order of the court in this action, to be melted, assayed and shipped to the Assay Office in Seattle, Washington, and said bank is hereby directed to hold the proceeds thereof, less the usual charges, subject to the order of the court.”

That pursuant to said order the said Miners & Merchants' Bank of Alaska, did, prior to the entry of judgment in this action, melt, assay and ship said gold-dust to the Assay Office, in Seattle, and thereafter held the proceeds thereof amounting to more than Fourteen Thousand Dollars, subject to the order of the Court in this action.

4.

That thereafter the above-entitled action came on for trial, and such proceedings therein were had that a judgment therein was rendered in favor of the

plaintiff and against the defendants, which said judgment, among other things, provided that the plaintiff, J. J. Chambers, have and recover of and from the defendants, Andrew Eadie, J. Potter Whittren, and Frank H. Waskey, and each of them, the sum of \$20,441.83, and costs and disbursements of action.

The said judgment further provided that the Miners & Merchants' Bank of Alaska, pay into the registry of this Court to the Clerk thereof, to be applied on the foregoing judgment, the proceeds of the gold-dust melted and assayed under the order of the Court, and that execution might issue to carry said judgment into effect.

5.

That thereafter the enforcement of said judgment [30] was by the defendants herein, duly superseded by the execution of a good and sufficient supersedeas bond in due form, and said cause was removed into the United States Circuit Court of Appeals for the Ninth Circuit, by writ of error.

That thereafter on the 6th day of July, 1909, the said United States Circuit Court of Appeals for the Ninth Circuit made and entered its judgment, affirming the judgment of said District Court in this action, and a Mandate was thereafter duly issued out of said United States Circuit Court of Appeals affirming said judgment and duly filed in this Court.

6.

That thereafter, and prior to the issuance of a certain Writ of Certiorari hereinafter referred to, the said Miners & Merchants' Bank of Alaska, pur-

suant to said judgment and order of this Court, duly paid over and delivered to the Clerk of this Court the proceeds of said gold-dust, and the same was thereupon deposited in the registry of this Court, and thereupon an execution was duly issued on said judgment and pursuant to said execution and said order of this Court, the whole of said proceeds were paid over and delivered to one, J. J. Cole, upon the written order of the plaintiff, Chambers, who duly receipted for the same.

7.

That the said J. J. Cole, now has in his possession, as your petitioner is informed and verily believes, the identical fund, so paid to him as aforesaid, or a large portion thereof, amounting, as petitioner is informed and believes, to \$11,106, more or less.

That said J. J. Cole, is a resident of the City of Nome, District of Alaska, being Manager of the Miners and Merchants' Bank of Alaska, and is now within the jurisdiction of this Honorable Court, and said J. J. Cole is still holding [31] said part of said fund as the trustee for Dr. Chambers under an express trust.

8.

That after the proceeds of said gold had been so paid over to the said J. J. Cole, such proceedings were had in the Supreme Court of the United States, that this cause was removed to the Supreme Court of the United States by writ of certiorari, and thereafter on the 13th day of May, 1912, the said Supreme Court of the United States, made and entered its judgment reversing this cause and remanding the

same to this Court for further proceedings not inconsistent with the judgment and opinion of said Supreme Court, and the Mandate of said Supreme Court so reversing and remanding said cause was filed in this Court on the 28th day of August, 1912.

9.

That this defendant is advised and believes that he is entitled to an order forthwith ordering and directing the said J. J. Cole, to pay over and deliver said money so received by him from the Registry of this Court, back into said Registry to await the final determination of this action, and to be held subject to the order of this Court.

WHEREFORE, this defendant prays that an order be made directing the said J. J. Cole, and the said plaintiff, J. J. Chambers, to show cause, if any they have, at a convenient time to be fixed by the Court, why the said J. J. Cole, should not forthwith pay over and deliver to the Clerk of this Court, to be deposited in the registry of the Court said sum of money so received by the said J. J. Cole, or such part thereof as may still be in his possession.

IRA D. ORTON,

Attorney for Defendant, Frank H. Waskey. [32]
United States of America,
District of Alaska,—ss.

Ira D. Orton, being first duly sworn, deposes and says:

That he is the attorney for Frank H. Waskey, one of the defendants in the above-entitled action; that he has read the above and foregoing petition, and

the same is true as he verily believes.

IRA D. ORTON.

Subscribed and sworn to before me this 2d day of September, 1912.

[Court Seal]

J. SUNDBACK,

Clerk of the District Court, District of Alaska, Second Division.

[Endorsed]: #1629. In the District Court for the District of Alaska, Second Division. J. J. Chambers, Plaintiff, vs. Frank H. Waskey et al., Defendant. Petition. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Sep. 2, 1912. John Sundback, Clerk. By J. A. B., Deputy. Ira D. Orton, Attorney for Deft. Waskey. [33]

*In the District Court for the District of Alaska,
Second Division.*

J. J. CHAMBERS,

Plaintiff,

vs.

ANDREW EADIE, J. POTTER WHITTREN and
FRANK H. WASKEY,

Defendants.

Order to Show Cause.

On reading and filing the foregoing petition of Frank H. Waskey, one of the defendants in the above-entitled action,

IT IS HEREBY ORDERED that the plaintiff, J. J. Chambers, and one, J. J. Cole, mentioned in said petition, show cause, if any they have, at the court-

room of this Court, in the Town of Nome, Alaska, on the 3d day of September, 1912, at the hour of 2 o'clock P. M. of said day, why an order should not be entered herein, directing the said J. J. Cole, to forthwith pay over and deliver to the Clerk of this Court, to be deposited in the registry of this Court, a certain sum of money, amounting to Eleven Thousand One Hundred and Six Dollars, more or less, alleged in said petition to still be in his possession and to be a portion of the funds formerly in the Registry of this Court in the above-entitled action and subject to the order of the Court;

IT IS FURTHER ORDERED that this order to show cause be forthwith served on said J. J. Cole and said plaintiff, J. J. Chambers, together with a copy of said verified petition, by delivering to said plaintiff, J. J. Chambers, and to said J. J. Cole, true copies of said order to show cause and said petition. [34]

Dated at Nome, Alaska, this 2d day of September, 1912.

THOMAS R. LYONS,
U. S. District Judge.

[Endorsed]: #1629. In the District Court for the District of Alaska, Second Division. J. J. Chambers, Plaintiff, vs. Frank H. Waskey et al., Defendant. Order to Show Cause. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Sep. 2, 1912. John Sundback, Clerk. By J. A. B., Deputy. Ira D. Orton, Attorney for Deft. Waskey. Vol. 9. Orders and Judgments, p. 518. C. [35]

[**Minutes of Court—September 3, 1912.**]

*In the District Court for the District of Alaska,
Second Division.*

TERM MINUTES, Special August, 1912, Term,
Beginning August 15, 1912.

Tuesday, September 3, 1912, at 10 A. M.

Court convened pursuant to adjournment, Hon.
THOMAS R. LYONS, District Judge, Presiding.

Upon the convening of Court the following pro-
ceedings were had:

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1629.

CHAMBERS

vs.

EADIE et al.

The hearing on the order to show cause set for hearing at this hour coming on regularly, Mr. Ira D. Orton and Mr. Albert Fink appeared for the petitioner, Mr. G. J. Lomen and Mr. William A. Gilmore appeared for the respondent and intervenors, the plaintiff J. J. Chambers appearing in person.

Thereupon Mr. William A. Gilmore, on behalf of respondent J. J. Cole filed a demurrer to the petition. After argument the demurrer was overruled by the Court. Exception allowed. Upon motion of Mr. Ira D. Orton the petitioner was allowed to amend the petition by interlineation.

Thereupon the answer of respondent J. J. Cole to petition was filed; also answer of intervenor William A. Gilmore to petition was filed.

Thereupon the plaintiff J. J. Chambers orally consented to the restitution of the fund, as prayed for in the petition, but denied some of the matters set forth in the petition. For the purposes of the hearing replies were deemed to have been filed to the answers of J. J. Cole and William A. Gilmore. J. J. Cole, a witness on behalf of petitioner, was called, sworn, and testified.

A certificate of deposit of the Miners & Merchants' Bank, No. 20998, was admitted in evidence, without objection, read in evidence, and marked Exhibit "A."

A certificate of deposit of the Miners & Merchants' Bank, No. 11321, was admitted in evidence, without objection, read in evidence, and marked Exhibit "B."

An assay certificate, No. 1052, of the Miners & Merchants' Bank, was admitted in evidence, without objection, read in evidence and marked Exhibit "C."

Petitioner thereupon admitted orally certain matters contained in the answers of J. J. Cole and William A. Gilmore, and denied certain other matters.

William A. Gilmore was called, sworn and testified on behalf of petitioner.

Petitioner rests.

Mr. William A. Gilmore, on behalf of respondent and intervenors, read in evidence, without objection, partial satisfaction of judgment in this cause, 1629, Chambers vs. Eadie et al., as the same appears on page 40, Volume 2, Judgment Docket of this Court; said satisfaction of judgment to be considered as Re-

spondent's Exhibit No. 1.

The mandate of the Circuit Court of Appeals filed in this Court on October 28, 1909, was admitted in evidence, without objection, and marked Respondent's Exhibit No. 2.

The order of this Court of October 29, 1909, to pay over certain moneys to the plaintiff herein was admitted in evidence, without objection, and marked Respondent's Exhibit No. 3. Ira D. Orton and J. J. Chambers were each called, sworn and testified on behalf of respondent. [36]

*In the District Court for the District of Alaska,
Second Division.*

No. 1629.

J. J. CHAMBERS,

Plaintiff,

vs.

ANDREW EADIE et al.,

Defendants.

Demurrer to Petition of Frank H. Waskey.

Comes now J. J. Cole named in the petition of Frank H. Waskey, and appearing specially for the purpose of this demurrer, alleges:

That it appears upon the face of the said petition that the Court has no jurisdiction of the person of said J. J. Cole or the subject of the matter mentioned in said petition, and that the Court is without jurisdiction to hear and determine the matter or grant the relief prayed for in said petition.

G. J. LOMEN and

WILLIAM A. GILMORE,

Attorneys for said J. J. Cole.

[Endorsed]: No. 1629. In the District Court for the District of Alaska, Second Division. J. J. Chambers, Plaintiff, vs: Andrew Eadie et al., Defendants. Demurrer to Petition of Frank H. Waskey. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Sep. 3, 1912. John Sundback, Clerk. By J. A. B., Deputy. William A. Gilmore, Attorney at Law, Nome, Alaska. Attorney for ————. [37]

*In the District Court for the District of Alaska,
Second Division.*

No. 1629.

J. J. CHAMBERS,

Plaintiff,

vs.

ANDREW EADIE et al.,

Defendants.

Answer of J. J. Cole to Petition of Frank H. Waskey.

Comes now J. J. Cole, mentioned in the petition of defendant Frank H. Waskey, and cited in the order to show cause filed therewith, and for answer to said petition, alleges as follows:

I.

Admits paragraph I of said petition.

II.

Admits the allegations of paragraph II, but alleges that the total amount of gold deposited with the Miners & Merchants' Bank was \$14,484.30.

III.

Answering paragraph III he alleges that the sum of \$14,484.30 was deposited in the Miners & Merchants' Bank the proceeds of bullion theretofore deposited and converted into a certificate of deposit payable to the order of the U. S. District Court.

IV.

He admits the allegations of paragraph IV. [38]

V.

He admits the allegations of paragraph V.

VI.

He denies each and every allegation, matter and thing contained in paragraph VI, and the whole thereof.

VII.

He denies the allegations of paragraph VII save and except that he has in his possession as trustee, as hereinafter alleged, the sum of Eleven Thousand One Hundred and Six Dollars belonging to the plaintiff, J. J. Chambers, and subject to claims as hereinafter alleged; and admits that he is a resident of the City of Nome, and manager of the Miners & Merchants' Bank, and within the jurisdiction of the Court.

VIII.

Answer paragraph VIII he admits the proceedings were had as therein alleged, but denies every other allegation therein contained.

IX.

As to the allegations contained in paragraph IX of said petition, the answering defendant alleges that he has no knowledge or information sufficient to form

a belief as to whether Frank H. Waskey is entitled to the moneys therein mentioned, or any part thereof, or to any order of said Court in the premises, and he therefore denies the same.

And for an affirmative defense to the petition of said defendant, Frank H. Waskey, and in response to the order directing him to show cause to the Court why an order should not be entered herein directing him to forthwith pay over and deliver to the Clerk of the Court, the money now held by him as trustee, this answering defendant alleges as follows: [39]

That on the 11th day of June, 1909, this answering defendant at the request of the plaintiff, J. J. Chambers and certain other parties to wit: J. S. McIntosh, John J. Meyers, W. J. Rowe and Wm. McManus, agreed to become trustee to hold certain property in trust for the use and benefit of the said parties, and thereupon a certain written agreement was entered into between the said J. J. Chambers and this answering defendant, a copy of which is hereunto annexed, marked Exhibit "A" and made a part hereof. That at the same time and as part of the same transaction, the said plaintiff, J. J. Chambers, executed and delivered to this answering defendant, as trustee, a quitclaim deed, a copy of which is marked Exhibit "B" and made a part hereof; that on and prior to the 29th day of October, 1909, the Miners & Merchants' Bank was custodian under certain stipulations in the above entitled action, of the sum of \$14,484.30, the proceeds of certain gold-dust received under said stipulations in the above-entitled action, and the same was evidenced by a certificate

of deposit payable to the order of the U. S. District Court; that on the said 29th day of October, 1909, this answering defendant was the manager of said Miners & Merchants' Bank, and on said date William A. Gilmore, Esq., as attorney for the plaintiff, J. J. Chambers, in the above-entitled action, presented to the Miners & Merchants' Bank a certain written order of the above-entitled Court, a copy of which said order is hereto annexed marked Exhibit "C" and made a part hereof; that upon presentation of said order, the said Miners & Merchants' Bank cancelled the said certificate of deposit and said money was placed to the credit of the plaintiff J. J. Chambers; that thereafter the said Chambers deposited with this answering defendant, as said trustee, for the said bondsmen above named, the sum of \$11,-106.00 which said money was the property of the said plaintiff, J. J. Chambers, as this answering defendant is informed and believes, and this answering [40] defendant now holds the same as trustee under the terms and conditions of the said trust agreement above set forth, and subject to the attachments and garnishments hereinafter mentioned; that since said time this answering defendant has been garnished by a writ of garnishment issued in the case of William A. Gilmore, plaintiff, vs. J. J. Chambers, defendant, and has answered in said garnishment proceedings and is also holding the said funds subject to said garnishment; that since said time this answering defendant has also been garnished in the case of Cornelius D. Murane, plaintiff, vs. J. J. Chambers, defendant, and has answered said

garnishment proceedings, and is holding the said funds subject to said garnishment; that since said time this answering defendant has also been further garnished under a writ of garnishment issued in the case of Ira D. Orton, plaintiff, vs. J. J. Chambers, Defendant, and has answered in said garnishment proceedings and is holding the said funds subject to said garnishment.

That all of the said attachments and garnishments were made under process of the above-entitled court.

That all of the said money in the possession of this answering defendant belonging to the said J. J. Chambers is held in trust under the terms of said trust agreement, and subject to all of the said garnishments and were all so held prior to the service upon this answering defendant of the order to show cause herein.

J. J. COLE, Trustee,
Answering Defendant.

G. J. LOMEN,
Attorney for Answering Defendant. [41]

United States of America,
District of Alaska,—ss.

J. J. Cole, being first duly sworn, deposes and says:

That he is the answering defendant above named; that he has read the above and foregoing answer to the petition of Frank H. Waskey, knows the contents thereof and the same is true as he verily believes.

J. J. COLE.

Subscribed and sworn to before me this 3d day of September, A. D. 1912.

[Notarial Seal]

G. J. LOMEN,

Notary Public in and for the District of Alaska.

[42]

Exhibit "A" [to Answer of J. J. Cole to Petition of Frank H. Waskey—Agreement, Dated June 11, 1909, J. J. Cole and J. J. Chambers.]

MEMORANDUM OF AGREEMENT made and entered into this 11th day of June, 1909, by and between J. J. COLE, of Nome, Alaska, party of the first part, and J. J. CHAMBERS, of the same place, party of the second part;

WITNESSETH, that

WHEREAS, the party of the second part has given an undertaking in the sum of twenty-five thousand (25,000) dollars in the case of J. J. Chambers, plaintiff, vs. C. V. La Farge et al., defendants, in the District Court of the District of Alaska, Second Division, with himself as principal and J. S. MacIntosh, John J. Meyer, W. J. Rowe, Wm. McManus, as sureties on said undertaking; and

WHEREAS, the party of the second part has this day executed a quitclaim deed of trust of an undivided one-half ($\frac{1}{2}$) interest in those two (2) certain mining claims known as No. 5 $\frac{1}{2}$ Little Creek and the Bon Voyage mining claim, situated in the Cape Nome Recording District, District of Alaska, to the party of the first part herein; and

WHEREAS, it is the desire and the intention of the parties hereto that the said party of the first part

shall hold the title of the said two (2) claims, together with the rents, issues and profits arising from the operation of both of said claims in trust in indemnity of such securities above named on said undertaking, and it is the desire and intention of the said parties hereto to evidence said trust in writing.

NOW, THEREFORE, for and in consideration of the mutual promises herein expressed, and other considerations,

IT IS HEREBY MUTUALLY AGREED, that the party of the second part shall deliver the said deed to the party of the first part, and the said party of the first part shall hold the [43] same in escrow, in trust, as indemnity to said securities, and upon the cancellation of the said undertaking said party of the first part agrees to re-deliver the said deed to the party of the second part, or reconvey the same, upon demand, without any other consideration.

IN WITNESS WHEREOF the said parties hereto have hereunto set their hands and seals the day and year above written.

J. J. COLE. [Seal]

J. J. CHAMBERS. [Seal]

Signed, sealed and delivered in the presence of:

WILLIAM A. GILMORE,

C. G. COWDEN.

United States of America,

District of Alaska,—ss.

THIS IS TO CERTIFY THAT ON THIS 11th day of June, 1909, before me, the undersigned, a Notary Public in and for the District of Alaska, personally appeared the within named J. J. Cole and

J. J. Chambers, who executed the foregoing instrument, and who each acknowledged to me that he executed the same freely and voluntarily, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year above written.

[Seal]

WILLIAM A. GILMORE,
Notary Public in and for the District of Alaska,
Residing at Nome. [44]

Exhibit "B" [to Answer of J. J. Cole to Petition of Frank H. Waskey—Deed, Dated June 11, 1909, J. J. Chambers and J. J. Cole, etc.]

THIS INDENTURE, made and entered into this 11th day of June, 1909, by and between J. J. Chambers of Nome, Alaska, party of the first part, and J. J. Cole, trustee of the same place, party of the second part,

WITNESSETH, that the said party of the first part, for and in consideration of the sum of one (1) dollar and other good and sufficient considerations to him in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, does by these presents grant, bargain, sell, convey and confirm, and quit-claim unto the said party of the second part, and to his heirs and assigns forever, all of the right, title, interest and estate of the party of the first part in and to the following described property:

An undivided one-half ($\frac{1}{2}$) interest in and to that certain placer mining claim known and designated as

No. 5 $\frac{1}{2}$ Little Creek, a tributary of Anvil Creek, in the Cape Nome Recording District, District of Alaska, said claim being a bench claim, adjoining on the east side of No. 5 Below on said Little Creek;

Also, an undivided one-half ($\frac{1}{2}$) interest in and to that certain placer mining claim known and designated as the BON VOYAGE situated and located about fifteen hundred (1500) feet in a southerly direction from No. 3 Below on Newton Gulch, a tributary of Dry Creek, in the said Cape Nome Recording District, District of Alaska.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all judgments, rents, issues, and profits therefrom, and all damages appertaining thereto, now of record, or otherwise.

TO HAVE AND TO HOLD, all and singular, the said premises, [45] together with the appurtenances, unto the said party of the second part, his heirs and assigns, as Trustee, in accordance with a memorandum of agreement of even date herewith, expressing the terms of said trust.

IN WITNESS WHEREOF, the said party of the first party has hereunto set his hand and seal the day and year above written.

J. J. CHAMBERS. (Seal)

Signed, sealed and delivered in presence of:

WILLIAM A. GILMORE.

C. G. COWDEN.

United States of America,
District of Alaska,—ss.

THIS IS TO CERTIFY, that on this 11th day of June, 1909, before me the undersigned, a Notary Public in and for the District of Alaska, personally appeared the within named J. J. CHAMBERS, who executed the foregoing instrument, and acknowledged to me that he executed the same freely and voluntarily, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year above written.

[Seal] WILLIAM GILMORE,
Notary Public in and for District of Alaska, Residing at Nome. [46]

Exhibit "C" [to Answer of J. J. Cole to Petition of Frank H. Waskey—Order Directing Miners & Merchants' Bank of Nome to Pay Plaintiff Certain Money, etc.]

In the District Court for the District of Alaska, Second Division.

No. 1629.

J. J. CHAMBERS,

Plaintiff,

vs.

ANDREW EADIE, J. POTTER WHITTREN and
FRANK H. WASKEY,

Defendants.

This matter coming on for hearing this 29th day of October, 1909, upon the application of plaintiff for an order directing the Miners & Merchants' Bank of Nome, Alaska, to pay to the plaintiff all moneys received and held by it from the gold-dust taken from the Bon Voyage Placer Claim, the claim in controversy in the above-entitled action, to apply on the plaintiff's judgment in the above-entitled action; and it appearing to the Court from the records and files of this case that certain amounts of gold-dust were heretofore deposited with the Miners & Merchants' Bank, of Nome, Alaska, and subsequently by order of this Court reduced to money and held by said Miners & Merchants' Bank, subject to the further order or orders of this Court in this action; and, it further appearing to the Court from the records of the case that on the 12th day of October, 1907, a judgment was entered in this case, decreeing and directing the said Miners & Merchants' Bank to pay the said money so held to the plaintiff to apply upon said judgment, and that thereafter a stay of execution was granted in the above-entitled action, staying the payment of the same; and, it further appearing to the Court that on the 28th day [47] of October, 1909, the mandate of the Circuit Court of Appeals for the Ninth Circuit has been duly filed with the Clerk of the above-entitled court, affirming the said judgment and decree of October 12th, 1907; and, it further appearing to the Court that plaintiff is entitled to the said money now held by said Miners & Merchants' Bank under the stipulations and orders heretofore signed and filed in this action; and the

Court being otherwise fully advised in the premises:

NOW ORDERS AND DIRECTS that said Miners & Merchants' Bank of Nome, Alaska, pay to the plaintiff to apply on the said judgment all sum or sums of money received and held by it under the stipulations and orders of the above-entitled court heretofore signed and filed, said sum or sums of money so to be paid to plaintiff to apply on the said judgment of October 12th, 1907, in this action.

Done in open court, this 29th day of October, 1909.

ALFRED S. MOORE,

District Judge.

[Endorsed]: No. 1629. In the District Court for the District of Alaska, Second Division. J. J. Chambers, Plaintiff, vs. Andrew Eadie et al., Defendants. Answer of J. J. Cole to Petition of Frank H. Waskey. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Sep. 3, 1912. John Sundback, Clerk. By J. A. B., Deputy. William A. Gilmore, Attorney at Law, Nome, Alaska, Attorney for ————. [48]

In the District Court for the District of Alaska, Second Division.

No. 1629.

J. J. CHAMBERS,

Plaintiff,

vs.

ANDREW EADIE et al.,

Defendants.

**Answer of William A. Gilmore Intervenor, to the
Petition of Defendant Frank H. Waskey.**

Comes now William A. Gilmore, intervenor, and upon leave of Court first had and obtained, files and submits to the Court his answer to the petition of the defendant Frank H. Waskey, as follows:

I.

Admits the allegations of paragraph I.

II.

Answering paragraphs II and III he alleges that there was deposited with the Miners & Merchants' Bank, under stipulation in the above-entitled action, the sum of \$14,484.30 deposited in a certificate of deposit payable to the order of the U. S. District Court.

III.

Admits the allegations of paragraphs IV and V of said petition.

IV.

Answering paragraph VI he denies each and every allegation therein contained and the whole thereof.
[49]

V.

He denies each and every allegation, matter and thing contained in paragraph VII, except that he admits that the said J. J. Cole is a resident of the City of Nome and manager of the Miners & Merchants' Bank, and within the jurisdiction of the Court.

VI.

Answering paragraphs VIII and IX he denies that petitioner is entitled to an order of the Court, or-

dering and directing the said J. J. Cole to pay over and deliver any of the funds or money now in his possession belonging to the plaintiff, into the registry of the Court.

And as an affirmative answer and defense this answering defendant alleges:

I.

That on and prior to the 29th day of October, 1909, the *Merchants & Miners' Bank* of Nome, held in escrow the sum of \$14,484.30 under certain stipulations in the above-entitled action, proceeds of certain gold-dust, which said amount was evidenced by a certificate of deposits payable to the order of the U. S. District Court; that on said 29th day of October, 1909, this answering defendant, as attorney for the plaintiff, J. J. Chambers, procured a certain written order from the judge of the above-entitled court, a copy of said order being annexed as Exhibit "C" to the answer of defendant J. J. Cole herein; and thereafter, on said date, this answering defendant took the said order to the *Miners & Merchants' Bank* at Nome, and presented the same to the bank and thereupon the said bank cancelled said certificate of deposit and paid the said sum of \$14,484.30 to the credit of plaintiff, J. J. Chambers. [50]

II.

That on or about the 11th day of June, 1909, the plaintiff, J. J. Chambers, for the use and benefit of J. S. McIntosh, John J. Meyers, W. J. Rowe and Wm. McManus, sureties on a certain undertaking, entered into an agreement and deed of trust with one J. J. Cole, one of the answering defendants herein,

wherein it was agreed that the said J. J. Cole, as trustee for said bondsmen, should hold certain real property and moneys to secure the payment of any damages that might occur by reason of the giving of said bond; that the said deed and agreement of trust are set out as Exhibits "A" and "B" to answer of said J. J. Cole herein.

III.

That after the said 29th day of October, 1909, the said J. J. Chambers deposited with the said J. J. Cole, as such trustee, the sum of \$11,106.00 and thereafter, on different dates, said J. J. Cole received from the property mentioned in said trust deed several sums of money amounting in all to the sum of over nineteen thousand dollars, all of which said moneys the said J. J. Cole holds under the terms and agreements of said trust.

IV.

That thereafter and on or about the 11th day of March, 1910, this answering defendant caused to be issued a writ of attachment and garnishment in the case of William A. Gilmore, plaintiff, vs. J. J. Chambers, defendant, wherein all of said funds held by the said J. J. Cole as trustee were garnished, and the said J. J. Cole now holds all of said funds subject to the garnishment of this answering defendant in said action. [51]

V.

That thereafter the said funds were again garnished in the case of Cornelius D. Murane, plaintiff, vs. J. J. Chambers, and in the case of Ira D. Orton, plaintiff, vs. J. J. Chambers, defendant, all of said

actions in which said garnishment proceedings were had were in the above-entitled court, and were begun, and the garnishment proceedings had prior to the motion and order to show cause filed herein by petitioner, Frank H. Waskey.

VI.

That if the said money or any part thereof is paid into the registry of the Court, the security of said bondsmen will be impaired and great injustice will occur to the attaching creditors above named; that answering defendant is informed, and knows it to be a fact, that the plaintiff, J. J. Chambers is entitled to a large sum of money from the defendant, Frank H. Waskey, for royalties from the ground in controversy in the above-entitled action, and that the said plaintiff, J. J. Chambers, has succeeded to the right of the defendant Andrew Eadie therein by deed, and has a good and valid defense to any action at law for any claim or demand on behalf of the said Frank H. Waskey, for any and all sums claimed to be due him from the said Chambers.

And for a second affirmative defense and answer to the petition of said Frank H. Waskey, this answering defendant alleges that the Court is without jurisdiction and has not jurisdiction in the above-entitled action to grant the relief prayed for in the motion and petition of said Frank H. Waskey.

WILLIAM A. GILMORE,

Intervenor and Answering Defendant. [52]

United States of America,
District of Alaska,—ss.

William A. Gilmore, being first duly sworn, deposes and says:

That he is the answering defendant named in the above and foregoing answer; that he has read the same and knows the contents thereof and the same is true as he verily believes.

WILLIAM A. GILMORE,

Subscribed and sworn to before me this 3d day of September, A. D. 1912.

[Notarial Seal]

L. W. HAYDEN,

Notary Public in and for the District of Alaska.

[Endorsed]: No. 1629. In the District Court for the District of Alaska, Second Division. J. J. Chambers, Plaintiff, vs. Andrew Eadie et al., Defendants. Answer of William A. Gilmore, Intervenor, to the Petition of Defendant Frank W. Waskey. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Sep. 3, 1912. John Sundback, Clerk. By J. A. B., Deputy. William A. Gilmore, Attorney at Law, Nome, Alaska, Attorney for ————. [53]

In the District Court for the District of Alaska, Second Division.

J. J. CHAMBERS,

Plaintiff,

vs.

ANDREW EADIE et al.,

Defendants.

Reply of the Defendant Waskey to Answer of J. J. Cole.

Comes now Frank Waskey, one of the defendants in the above-entitled action, and for reply to the answer of J. J. Cole, which said answer was filed herein on the 3d day of September, 1912, admits, denies and alleges:

1.

As to the allegation contained in the affirmative defense of said J. J. Cole,—

“that upon the presentation of said order, the said Miners & Merchants’ Bank, cancelled the said certificate of deposit, and said money was placed to the credit of the plaintiff, J. J. Chambers,”

this defendant denies that upon the cancellation of said certificate of deposit said money was placed to the credit of said J. J. Chambers, and further denies that thereafter the said Chambers deposited the same with said J. J. Cole, as trustee for the bondsmen named in said answer, and denies that said sum of \$11,106.00, was the property of said J. J. Chambers, but in this behalf defendant alleges that when said certificate of deposit was cancelled, the proceeds thereof were immediately placed in a new certificate of deposit, payable to said J. J. Cole, as trustee.

[54]

Defendant Waskey further alleges that said money in the possession of J. J. Cole, as trustee, is not the property of said J. J. Chambers, and as to the attachments referred to in said answer as having been levied on cases entitled William A. Gilmore, Plaintiff,

versus, J. J. Chambers, Defendant, and Cornelius D. Murane, plaintiff, versus, J. J. Chambers, Defendant, defendant alleges that said writs of attachment were issued in certain causes wherein said Gilmore and Murane sued to recover from the said Chambers, attorney fees in this and other actions, and that said Gilmore and Murane at all times had full and complete knowledge of the rights and equities of the defendant in and to said fund of \$11,106.00.

IRA D. ORTON,

ALBERT FINK,

Attorneys for Defendant Waskey.

United States of America,
District of Alaska,—ss.

Ira D. Orton, being first duly sworn, deposes and says:

That he is one of the attorneys for the defendant, Frank H. Waskey, in the above-entitled action; that he has read the within and foregoing reply, and believes the same to be true.

IRA D. ORTON.

Subscribed and sworn to before me, this 4th day of September, 1912.

[Notarial Seal] J. ALLISON BRUNER,
Notary Public, District of Alaska.

[Endorsed]: #1629. In the District Court for the District of Alaska, Second Division. J. J. Chambers, Plaintiff, vs. F. H. Waskey et al., Defendant. Reply to Answer of J. J. Cole. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Sep. 4, 1912. John

Sundback, Clerk. By J. A. B., Deputy. Ira D. Orton, Attorney for Deft. Waskey. [55]

In the District Court, District of Alaska, Second Division.

J. J. CHAMBERS,

Plaintiff,

vs.

ANDREW EADIE et al.,

Defendants.

Reply to the Defendant Waskey to Answer of the Intervenor, William A. Gilmore.

Comes now the defendant, Frank H. Waskey, and for reply to the answer of William A. Gilmore, intervenor herein, admits, denies and alleges:

1.

Replying to paragraph one of the affirmative answer and defense of said William A. Gilmore, the said defendant, Waskey, denies that said Miners & Merchants' Bank upon cancelling the certificate of deposit mentioned in said paragraph, placed said sum of \$14,484.30 to the credit of the plaintiff, J. J. Chambers, but, on the contrary, alleges that upon the cancellation of the said certificate of deposit, a new certificate of deposit was immediately issued in lieu thereof, payable to J. J. Cole, Trustee.

2.

Replying to paragraph 3 of said answer and defense of said intervenor, William A. Gilmore, said defendant Waskey denies that part of said paragraph reading as follows:

“That after the said 29th day of October, 1909, the said J. J. Chambers deposited with the said J. J. Cole, as such trustee, the sum of \$11,106.00,”

but, on the contrary, alleges that said sum of \$11,106.00 was turned over and deposited with said J. J. Cole, by the Miners & Merchants' Bank of Alaska. [56]

As to the other allegations of paragraph 3 of said affirmative answer, defendant Waskey has no knowledge or belief, but has no reason to disbelieve the same.

3.

The said defendant Waskey admits that attachments were issued and levied as alleged in paragraph 4 of said affirmative answer, and in paragraph 5 thereof, but in that behalf defendant Waskey alleges that said William A. Gilmore and said Cornelius D. Murane commenced and prosecuted said suits referred to in said paragraphs against the said J. J. Chambers for attorney fees alleged to be due from the said Chambers to them for services in this and other cases, and that the said Gilmore and said Murane had at all times full and complete knowledge of the rights and equities of the defendant Waskey in and to the funds in controversy.

4.

Replying to paragraph 6 of said affirmative answer and defense, defendant Waskey denies each and every allegation of said paragraph 6.

5.

Replying to the second affirmative defense and an-

swer of said intervenor, William A. Gilmore, defendant Waskey denies each and every allegation thereof.

IRA D. ORTON,

ALBERT FINK,

Attorneys for Defendant Waskey. [57]

United States of America,

District of Alaska,—ss.

Ira D. Orton, being first duly sworn, deposes and says:

That he is one of the attorneys for the defendant, Frank H. Waskey, in the above-entitled action; that he has read the within and foregoing reply and believes the same to be true.

IRA D. ORTON.

Subscribed and sworn to before me this 4th day of September, 1912.

[Notarial Seal]

J. ALLISON BRUNER,

Notary Public, District of Alaska.

[Endorsed]: #1629. In the District Court for the District of Alaska, Second Division. J. J. Chambers, Plaintiff, vs. Frank H. Waskey et al., Defendant. Reply to Answer of Intervenor William A. Gilmore. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. Sep. 4, 1912. John Sundback, Clerk. By J. A. B., Deputy. Ira D. Orton, Attorney for Deft. Waskey. [58]

[Minutes of Court—September 4, 1912.]

In the District Court for the District of Alaska, Second Division.

TERM MINUTES, Special August, 1912, Term,
Beginning August 15, 1912.

Wednesday, September 4, 1912, at 10 A. M.

Court convened pursuant to adjournment, Hon.
THOMAS R. LYONS, District Judge, presiding.

Upon the convening of court the following proceedings were had:

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1629.

CHAMBERS

vs.

EADIE et al.

Upon motion of Mr. Gilmore the stipulation and order of October —, 1906, providing that the gold-dust should be deposited in the Miners & Merchants' Bank were considered read in evidence, to be marked Respondent's and Intervenor's Exhibits Nos. 4 and 5.

This closing the testimony, argument was made by the attorneys for the respective parties. At the close of the argument, Mr. William A. Gilmore, on behalf of himself as intervenor, was granted leave to introduce further testimony.

Thereupon court adjourned until 2 P. M. to-day.

2 P. M.

1629.

CHAMBERS

vs.

EADIE et al.

Upon motion of Mr. William A. Gilmore, the hearing on the order to show cause was reopened without objection, on the part of petitioner.

William A. Gilmore was recalled on behalf of intervenor. A writ of attachment, filed April 2, 1910, in cause No. 2154, Gilmore vs. Chambers, was admitted in evidence, without objection, and marked Respondent's and Intervenor's Exhibit No. 6. An alias writ of attachment in cause No. 2154, Gilmore vs. Chambers, was admitted in evidence, without objection, and marked Respondent's and Intervenor's Exhibit No. 7. Mandate of the Circuit Court of Appeals, filed in this court, August 23, 1912, in the case of Gilmore vs. Chambers, No. 2154, was considered read in evidence; also the execution issued in cause No. 2154, Gilmore vs. Chambers, on August 30, 1912, was considered read in evidence.

The minutes of the Court in cause No. 2154, Gilmore vs. Chambers, found on page 571, Volume 13, Journal of this Court, were in evidence, without objection.

Mr. G. J. Lomen, on behalf of respondent, offered in evidence Judgment in cause No. 2375, Murane vs. Chambers, which was admitted in evidence, without objection, and marked Respondent's Exhibit No. 8.

This closing the evidence in the case, the matter was submitted to the Court for its decision. [59]

In the District Court for the District of Alaska, Second Division.

No. 1629.

J. J. CHAMBERS,

Plaintiff,

vs.

ANDREW EADIE, J. POTTER WHITTREN and
FRANK H. WASKEY,

Defendants.

W. A. GILMORE,

Intervenor.

J. J. COLE,

Trustee.

Findings of Fact and Conclusions of Law.

This matter having come on for hearing on the petition of Frank H. Waskey, one of the defendants herein, for an order directing J. J. Cole to show cause why the said Cole should not pay over and deliver to the Clerk of this Court, to be deposited in the registry of the court, the sum of Eleven Thousand One Hundred and Six Dollars now held by the said Cole as trustee for the plaintiff herein; and the Court having heretofore issued an order requiring the said Cole on the 3d day of September, 1912, at the courthouse in Nome, Alaska, to appear and show cause why he should not be required to pay the sum of Eleven Thousand One Hundred and Six Dollars, which he then and there held as trustee for the plain-

tiff herein, to the Clerk of this Court to be held in the registry of the court until the final determination of this action; and the said J. J. Cole having appeared on said day and answered said order to show cause; and W. A. Gilmore having also appeared and answered said petition; and the Court thereafter having heard the testimony of said petitioner, said J. J. Cole and said intervenor; and having heard argument of counsel, and having thereafter taken the said matter under advisement; and the Court, being now fully advised in the premises, finds: [60]

FINDINGS OF FACT.

That under and by virtue of the stipulation made by the parties in the above-entitled action the sum of Fourteen Thousand Four Hundred and Eighty-four Dollars and Thirty Cents, in gold-dust, was paid into the registry of the Court, to be held there until the final determination of the action;

That thereafter, by order of this Court based upon a stipulation of all of the parties to this action, the said gold-dust was thereafter delivered to the Miners & Merchants' Bank of Nome, Alaska, and the said Miners & Merchants' Bank was authorized by an order of this Court to ship the same to the assay office at Seattle, Washington, for the purpose of reducing the same to its actual money value;

That thereafter, and in accordance with said order, the said Miners & Merchants' Bank at Nome, Alaska, gave its certificate of deposit to the District Court for said sum, to wit: Fourteen Thousand Four Hundred and Eighty-four Dollars and Thirty Cents, the same being the money value of said gold-dust.

That thereafter the plaintiff herein procured judgment in this cause against the defendants, and each of them, for a certain interest in the mining claim in controversy, known as the Bon Voyage, and also a money judgment against the defendants, and each of them, for the sum of Twenty Thousand, Four Hundred and Forty-one Dollars and Eighty-three Cents, which judgment provided that the said money in the possession of said Miners & Merchants' Bank be applied on said judgment;

That thereafter the defendants herein duly prosecuted a writ of error from said judgment to the Circuit Court of Appeals for the Ninth Circuit, and filed their supersedeas bond for the purpose of staying execution of said judgment;

That thereafter, and in July, 1909, the Circuit Court of Appeals for the Ninth Circuit affirmed the judgment of this Court; [61]

That thereafter, and before any certiorari proceedings had been prosecuted by the defendants from the judgment of said Circuit Court of Appeals for the Ninth Circuit to the Supreme Court of the United States, the plaintiff herein enforced the payment of a certain portion of said judgment by having said fund in the Miners & Merchants' Bank applied on said judgment;

That thereafter the plaintiff herein used, for the payment of certain debts of his, a certain portion of said fund so collected and deposited the remainder with the said J. J. Cole as his trustee and directed the said J. J. Cole to hold the same as plaintiff's trustee for the purpose of securing certain persons who

had signed a bond, with the plaintiff herein, as sureties in another action entitled *Chambers v. LaFarge, et al.*;

That thereafter the defendants herein prosecuted certiorari proceedings from the said judgment of the Circuit Court of Appeals for the Ninth Circuit and procured a reversal of the judgment of that court and the judgment of this Court in this cause;

That the Supreme Court of the United States after reversing said cause, remanded the same to this Court for a new trial;

That after the affirmance of the judgment of this Court in this cause by the Circuit Court of Appeals for the Ninth Circuit, and before the same was reversed by the Supreme Court of the United States, the intervenor herein commenced an action in this Court against the plaintiff herein and sued out a writ of attachment and garnished all of said fund in the hands of said J. J. Cole;

That the principal portion of the claim upon which the said intervenor based said action against the plaintiff herein was for compensation claimed to be due said intervenor from the plaintiff by reason of services rendered to the plaintiff by the intervenor as counsel for the plaintiff in this action; [62]

That at the time of the bringing of said action by the intervenor against the plaintiff and the garnishing of said fund in said action the said intervenor had full knowledge of the contingent equity which the defendants, and each of them, had in the particular fund so garnished.

Upon the foregoing Findings of Fact, the Court concludes as matter of law:

CONCLUSIONS OF LAW.

That the petitioner herein is entitled as against the trustee, the intervenor, and the persons who signed the bond with the plaintiff as principal, in the case of Chambers v. LaFarge, et al., to an order requiring the said trustee to pay the said fund of Eleven Thousand One Hundred and Six Dollars into the registry of the Court to abide the determination of this action, or the further order of this Court.

Done in open Court at Ketchikan, Alaska, October 15, 1912.

THOMAS R. LYONS,
Judge of the District Court.

[Endorsed]: No. 1629. In the District Court of the United States for the Div. No. 2 of Alaska. J. J. Chambers, Plaintiff, vs. Andrew Eadie et al., Defendants. W. A. Gilmore, Intervenor. J. J. Cole, Trustee. Findings of Fact and Conclusions of Law. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. Dec. 20, 1912. John Sundback, Clerk. By —————, Deputy. L. Vol. 10. Orders and Judgments, p. 60. C. [63]

In the District Court for the District of Alaska, Second Division.

No. 1629.

J. J. CHAMBERS,

Plaintiff,

vs.

ANDREW EADIE, J. POTTER WHITTREN and
FRANK H. WASKEY,

Defendants.

W. A. GILMORE,

Intervenor.

J. J. COLE,

Trustee.

Opinion.

This is a petition by Frank H. Waskey, one of the defendants in the above-entitled action, for restitution of certain moneys collected by the plaintiff herein under and by virtue of a judgment rendered heretofore in this cause by this Court which was subsequently reversed by the Supreme Court of the United States.

The verified petition, among other things, alleges: That heretofore, to wit, and prior to the trial of the above-entitled action, a certain stipulation was entered into between the plaintiff above named and the defendants, wherein and whereby it was stipulated and agreed that in lieu of the issuance of an injunction *pendente lite* twenty-five per cent of the gross output of the premises in controversy in this

action be placed in escrow with the Miners & Merchants' Bank, at Nome, Alaska, to await the final judgment of the Court herein; that in pursuance to said stipulation and agreement there was prior to the trial of the above-entitled action deposited with said Miners & Merchants' Bank, by the defendants herein, gold of the value of over Fourteen Thousand Dollars; that after the deposit of said gold-dust and before the trial of the above-entitled action, upon stipulation of the parties hereto, the Court made [64] and entered an order herein as follows:

“On reading and filing the foregoing stipulation, it is hereby ordered that the Miners & Merchants' Bank of Alaska, be authorized to cause the gold-dust deposited with it subject to the order of the court in this action, to be melted, assayed and shipped to the assay office in Seattle, Washington, and said bank is hereby directed to hold the proceeds thereof, less the usual charges, subject to the order of the court.”

That pursuant to said order the said Miners & Merchants' Bank of Alaska, did, prior to the entry of judgment in this action, melt, assay and ship said gold-dust to the assay office, in Seattle, and thereafter held the proceeds thereof amounting to more than Fourteen Thousand Dollars, subject to the order of the Court in this action; that thereafter the above-entitled action came on for trial, and such proceedings therein were had that a judgment therein was rendered in favor of the plaintiff and against the defendants, which said judgment, among other things, provided that the plaintiff, J. J. Chambers,

have and recover of and from the defendants, Andrew Eadie, J. Potter Whittren, and Frank H. Waskey, and each of them, the sum of Twenty Thousand Four Hundred and Forty-one Dollars and Eighty-three Cents, and costs and disbursements of action; the said judgment further provided that the Miners & Merchants' Bank of Alaska pay into the registry of this court to the Clerk thereof, to be applied on the foregoing judgment, the proceeds of the gold-dust melted and assayed under the order of the Court, and that execution might issue to carry said judgment into effect; that thereafter the enforcement of said judgment was, by the defendants herein, duly superseded by the execution of a good and sufficient supersedeas bond in due form, and said cause was removed into the United States Circuit Court of Appeals for the Ninth Circuit, by writ of error; that thereafter on the 6th day of July, 1909, the said United States Circuit Court of Appeals for the Ninth Circuit made and entered its judgment, affirming the judgment of said District Court in [65] this action, and a mandate was thereafter duly issued out of said United States Circuit Court of Appeals affirming said judgment and duly filed in this Court; that thereafter, and prior to the issuance of a certain writ of certiorari hereinafter referred to, the said Miners & Merchants' Bank of Alaska, pursuant to said judgment and order of this Court, duly paid over and delivered to the Clerk of this Court the proceeds of said gold-dust, and the same was thereupon deposited in the registry of this Court, and thereupon an execution was duly issued

on said judgment and, pursuant to said execution and said order of this Court, the whole of said proceeds were paid over and delivered to one J. J. Cole upon the written order of the plaintiff, Chambers, who duly receipted for the same; that the said J. J. Cole now has in his possession, as your petitioner is informed and verily believes, the identical fund, so paid to him as aforesaid, or a large portion thereof, amounting, as petitioner is informed and believes, to Eleven Thousand, One Hundred and Six Dollars, more or less; that said J. J. Cole is a resident of the city of Nome, District of Alaska, being manager of the Miners & Merchants' Bank of Alaska, and is now within the jurisdiction of this Honorable Court, and said J. J. Cole is still holding said part of said fund as the trustee for said Chambers under an express trust; that after the proceeds of said gold had been so paid over to the said J. J. Cole, such proceedings were had in the Supreme Court of the United States that this cause was removed to the Supreme Court of the United States by writ of certiorari, and thereafter on the 13th day of May, 1912, the said Supreme Court of the United States made and entered its judgment reversing this cause and remanding the same to this Court for further proceedings not inconsistent with the judgment and opinion of said Supreme Court, and the mandate of said Supreme Court so reversing and remanding said cause was filed in this court on the 28th [66] day of August, 1912; that this defendant is advised and believes that he is entitled to an order forthwith ordering and directing the said J. J. Cole to pay over

and deliver said money so received by him from the registry of this court, back into said registry to await the final determination of this action, and to be held subject to the order of this Court.

To the petition said J. J. Cole answered admitting substantially all the allegations of the petition excepting that after the bullion had been converted into money it was ever paid into the registry of the Court; but, on the contrary, alleging that the same was paid over under the judgment entered in said cause in this court to the plaintiff herein; and further alleging that all of said money was thereafter deposited by the plaintiff with said Cole as trustee to be held by him as such trustee to protect certain sureties who had executed an injunctional bond as sureties in another action wherein plaintiff herein was plaintiff. Said answer further alleges that said sum, together with other property, has been heretofore attached and garnished by garnishment proceedings in two actions, one by W. A. Gilmore against the plaintiff herein, and the other by C. D. Murane against the plaintiff herein.

The intervenor, W. A. Gilmore, filed an answer in intervention to the petition of Waskey, which is substantially identical with the answer of J. J. Cole.

APPEARANCES.

J. J. CHAMBERS, Plaintiff, *in propria persona*;

IRA D. ORTON and ALBERT FINK, for the Defendants;

W. A. GILMORE, Intervenor, *in propria persona*;

W. A. GILMORE, for J. J. Cole, Trustee.

L. G. LOMAN, for C. D. Murane, Attaching Creditor;

LYONS, Judge of the District Court. [67]

The said trustee and the intervenor insist:

First: That the Court is without jurisdiction in this proceeding to grant the relief prayed for in the petition for the reason that a summary proceeding of this character can under no circumstances be maintained under our law.

Second: That the evidence fails to show that the fund now in the hands of said trustee is the same fund that was collected by the plaintiff in this action on his judgment against the defendants herein.

Third: That the said intervenor and the said C. D. Murane, having attached and garnished said fund, are, under the Alaskan statute, in the position of innocent purchasers for value without notice and, therefore, have a prior claim to the fund in controversy, and that, even though summary proceedings may be maintainable against a party to the record after the reversal of the judgment, such proceedings cannot be maintained against strangers to the record.

Fourth: That the said trustee is holding said fund to secure certain sureties on an injunctional bond with the plaintiff Chambers as principal and that said sureties are still liable on said bond and have not been made parties to this proceeding.

The first contention made by trustee and the intervenor is not tenable.

“Both under the common law and by statute in most jurisdictions a party entitled to restitution may obtain it by a summary proceeding in the same suit without resorting to a new one for that purpose, and on the granting of the motion for restitution it becomes a part of the judgment and the amount can be collected by execution, although its enforcement is not confined to this means alone.”

3 Cyc. 467, 468, and cases cited; Reynolds vs. Harris, 76 Am. Dec. 459; Orke vs. McManus, 129 N. W. 68, at page 70; First National Bank of Fort Scott vs. Elliott, 55 Pac. 880; McFadden vs. Swinerton, 36 Ore. 336, at page 355. [68]

“Where the record itself shows the payment of the judgment the party may have restitution without a *scire facias*; but where the facts do not appear of record a *scire facias* or some proceeding of that nature is necessary.”

3 Cyc. 468, and cases cited.

The proceeding here is in the nature of a common-law *scire facias*, that is, a citation to the party who collected money on the judgment, which was afterwards reversed, to show cause why he should not be compelled to either pay the money to the other party

to the action or into the registry of the Court to abide the determination of the action on a new trial which has been directed by the appellate court. To the same effect see *McFadden v. Swinerton*, *supra*, where many authorities sustaining this proceeding are cited.

Referring now to the second contention insisted upon by the trustee and the intervenor, to wit, that the fund which petitioner seeks to have paid by the trustee into the registry of the Court is not the same fund that was collected by the plaintiff Chambers on the judgment rendered in this Court, which was thereafter reversed by the Supreme Court of the United States. The evidence in this matter is substantially undisputed and shows that certain gold-dust was, by stipulation between the parties, held in registry of the Court to abide the determination of the action; that thereafter by order of the Court and upon stipulation the said dust was converted into money and deposited with the Miners & Merchants' Bank of Nome, Alaska, who issued to the District Court a certificate of deposit therefor; that thereafter, upon the affirmance of the judgment of this Court by the Circuit Court of Appeals and before a writ of certiorari had been sued out from the judgment entered in the Circuit Court of Appeals for the Ninth Circuit, the said Miners & Merchants' Bank, under the order of this Court, paid to the plaintiff herein all of said fund which had theretofore been held in the registry of the Court; that thereafter the said plaintiff Chambers withdrew [69] from said bank a certain portion of said fund, leaving a bal-

ance of \$11,106.00; that thereafter and in October, 1909, the said Chambers delivered said sum last mentioned to said trustee in trust to secure certain parties who had signed an injunctional bond as sureties at the instance of said plaintiff Chambers in the case of Chambers v. LaFarge et al. It is true that there is no evidence that the money held by Cole as such trustee is the identical money which was collected from the defendants herein by the plaintiff under and by virtue of the judgment of this Court herein, but the evidence conclusively shows that it is a portion of the same fund; that is, that the credit which was given to the District Court by virtue of the certificate of deposit given to this Court by the Miners & Merchants' Bank, heretofore referred to, was merely transferred from the Court to the plaintiff by the enforcement of the judgment and thereafter from the plaintiff to his trustee Cole. Can it be seriously contended, if that fund were now in the Miners & Merchants' Bank to the credit of Chambers, it would not be subject to the order of this Court when such order of the Court is properly invoked by petition of defendants herein? The law does not require in proceedings for restitution for the payment and delivery of money that it must be the identical money which was taken from the other party to the action under and by virtue of a judgment which was thereafter reversed, but it is sufficient to satisfy the demands of the law if it is the same fund; and, in fact, if the proceeding were against a party to the action it would not be necessary to show that it was even the same fund, but the

Court could and should order the party who had profited by a judgment subsequently reversed to pay back into the registry of the Court, or to the other party, as the circumstances of the case might warrant, the amount of money which he had collected under and by virtue of such judgment. *Bills vs. Schlip*, 127 Fed. 103; *In re Howard*, 130 Fed. 1004; *In re Howard*, 135 Fed. 721. [70]

The third objection of the trustee and the intervenor to the granting of the petition herein is more serious. The facts, however, disclose that the intervenor Gilmore and the other attaching creditor, C. D. Murane, were attorneys for the plaintiff in the above-entitled action, and the claim of Murane, which has been reduced to judgment with an order for the sale of attached property including the fund in controversy, is based upon a claim for services as attorney rendered the plaintiff Chambers in the above-entitled action. The intervenor testified that a portion of his claim under which the garnishment was made is for attorney's fees for services rendered in this action. What amount of the intervenor's claim is for services in this action does not appear, but the evidence tends to show that the greater portion of the claim is for services rendered the plaintiff Chambers by intervenor as counsel in this particular action. C. D. Murane filed no answer to the petition, but his counsel, L. G. Lomen, appeared with the intervenor and stated that the objections to the petition urged by the intervenor were substantially the same objections that would be made by Murane, and the evidence tends to show that both the inter-

venor and Murane have the same standing before the Court, except that the testimony tends to show that a portion of the claim of the intervenor is for services rendered the plaintiff by intervenor as counsel in other cases.

To sustain their contention that they have a superior claim to the sum in controversy over the petitioner even though the fund referred to may be the same fund realized by Chambers from the judgment of this Court, heretofore referred to, the attaching creditors invoke section 151 of the Code of Civil Procedure for the District of Alaska, found on page 174 of Carter's Annotated Alaska Codes, which provides, among other things, as follows: [71]

“From the date of the attachment until it be discharged, or the writ executed, the plaintiff as against third persons shall be deemed a purchaser in good faith and for a valuable consideration of the property, real or personal, attached, subject to the conditions prescribed in the next section as to real property.”

It will be observed that the statute quoted states that the plaintiff as against third persons shall be deemed a purchaser in good faith and for a valuable consideration, but if it appears that the plaintiff had notice of prior equities he cannot be deemed an innocent purchaser for value without notice. It isn't pleaded nor is it proved that these attaching creditors did not have knowledge of the contingent equity which the defendants had in the money which was taken under the judgment in this action. They were attorneys for the plaintiff in the action; ap-

peared for him in both this Court and the Circuit Court of Appeals for the Ninth Circuit; and had full knowledge of the fact that a *certiorari* proceeding might be prosecuted from the judgment of the Circuit Court of Appeals herein to the Supreme Court of the United States; in fact, at the time Murane sued out his attachment the judgment of this Court and of the Circuit Court of Appeals in this action had been reversed by the Supreme Court of the United States. In *re Rhodes vs. McGarry*, 19 Ore. 222, at page 229, the Court said:

“The only ground upon which they claim to be purchasers in good faith and for a valuable consideration of the property is that the said proceedings were duly instituted. If they had purchased the block from McGarry for a valuable consideration and had claimed by virtue of such purchase a right to it to the exclusion of the equitable title which the appellant had therein they would have been compelled to allege and prove that they had no notice whatever, down to the time of the actual payment of the consideration, of any such title, nor of the circumstances alleged in the complaint from which such notice could be inferred; and then they would only have established an equity in themselves equal to that in favor of the appellant, although their having the legal title would give them a superior advantage. The legal title, however, without being coupled with an equal equity will not prevail over the equitable title. It seems to me that notwithstanding the lan-

guage of the code above set out, an attaching creditor, in order to be deemed a purchaser in good faith of the property as against one having an outstanding equity, must allege [72] and prove all the facts necessary to establish that character of ownership in favor of a purchaser of such property as against such an equity. It can hardly be supposed that the legislature intended by the provision of the code referred to, to place an attaching creditor on any more favorable grounds with reference to his rights in the property attached than that occupied by a purchaser of the property; nor to deem the former a purchaser in good faith except under the same circumstances in which the latter would be deemed such purchaser. Any other view would lead to absurd consequences and occasion injustice. It would enable a party to cut off an outstanding equity by resorting to an attachment when he would not be able to accomplish it by a direct purchase of the property. Such a result was obviously not contemplated by the adoption of the said provision of the code. If this view be correct it follows that the answer of the said respondents to the complaint in the suit was not sufficient to show that they were entitled to the standing of the purchasers of the block in good faith. The answer filed by them does not contain any such defense but confines itself strictly to a traverse of appellant's allegations. If the respondents had desired to claim that they be deemed purchasers in good faith of

the property they should have averred the facts which under the statute would have constituted them such in avoidance of the matters alleged in the complaint regarding the appellant's equity and not have attempted to avail themselves of such defense by merely controverting those allegations."

The statute construed by the Supreme Court of the State of Oregon in the case last cited is identical with the section of our statute under which the attaching creditors in this proceeding claim a superior equity to the petitioner. See, also, *Meier vs. Hess*, 23 Ore. 559; *Flegel vs. Koss*, 47 Ore. 366; *Jennings vs. Lentz*, 50 Ore. 483; *Dimmick vs. Rosenveld*, 34 Ore. 101. It must follow, therefore, from the pleadings and evidence herein that the attaching creditors were not in the position of purchasers in good faith for value without notice of the contingent equity which the defendants had in the fund in controversy.

The attaching creditors insist that restitution of property taken under judgment which was thereafter reversed cannot be had against any person except a party to the record, and they insist that they were strangers to the record although they were attorneys for the plaintiff in this cause. [73]

"An erroneous judgment is the act of the court until vacated upon appeal or by some other proceeding. All persons may safely treat it as valid unless we may except from this rule the parties to the suit and their attorneys, and even they are affected by its reversal no further

than by being liable to make restitution of the property in their hands acquired under such judgment."

2 Freeman on Executions, 2d Ed., section 345.

"When the judgment is discontinued by virtue of its reversal the title reverts in the defendant in execution whether the plaintiff has in the meantime made any conveyance or not. The plaintiff's attorney on becoming a purchaser at a sale under execution in a case which he has conducted occupies a position as unfavorable as that of the plaintiff and must lose the property upon the reversal of the judgment."

2 Freeman on Executions, 2d Ed., section 347, page 1155; Galpin vs. Page, 18 Wallace, 350; Stroud vs. Casey, 78 Am. Dec. 556; 3 Cyc. 466.

Counsel for the attaching creditors rely particularly on the Bank of the United States vs. Bank of Washington, 6 Peters, 7, and Langley vs. Warner, 3 N. Y. 327, and latter cases from New York State which affirm the doctrine announced in Langley vs. Warner, *supra*. But the doctrine announced in re 6 Peters, 7, *supra*, cannot be successfully invoked here. In that case the Supreme Court of the United States held that after money had been collected on a judgment and thereafter had been appropriated by the party to the record collecting the same towards the liquidation of an existing obligation and that such judgment was thereafter reversed that the other party to the record from whom the collection was made was not entitled to restitution as against the

stranger whose debt had been paid, even though such stranger had been notified that a writ of error had been prosecuted from the trial court to the Supreme Court of the United States. Strangers are not bound to take notice of proceedings on appeal or writs of error when the judgments appealed from are not superseded; but parties and their privies must take cognizance of such proceedings, and, if they realize on a judgment which is afterwards [74] reversed, they must make restitution to the other party in the amount realized. It is the policy of the law that judgments when entered should be respected and that parties bidding at judicial sales should be protected in order that legitimate bidding may be encouraged, and for that reason the stranger who purchases at a judicial sale made in pursuance of a judgment rendered by a Court having jurisdiction of the parties and subject matter is protected in his title although the case may be subsequently reversed. But the law does not extend such protection to parties to the record or their privies. In the New York cases relied upon by the attaching creditors the funds sought to be collected in those instances had actually been paid to the attorney of the party to the record who collected the same and it was applied in payment of an obligation of such party to his attorney. Whether such holding is in consonance with the weight of authority is not necessary to pass upon in this instance, for the reason that the holding by the New York courts in the cases referred to cannot apply to the facts in this case. The attaching creditors here have merely attached the

fund which, so far as the record in this case at this time discloses, belongs to the defendants in this action, since it was taken from them by virtue of a judgment which was thereafter reversed; and, while it is true that both parties to the action stipulated that that fund might remain in the registry of the court until the cause was finally determined, yet it is also true that the defendants, while operating the property, took the gold from the disputed premises, and the plaintiff having brought suit to recover a half interest in the mining claim in controversy and having threatened to enjoin the continued operation of the mine the defendants in order to prevent such injunction, agreed that the fund should be paid into the registry of the court as royalty to abide the determination of the action. The plaintiff having procured [75] judgment in this court, that fund was taken by him under such judgment. He thereby secured an advantage of the defendants by reason of an invalid judgment, and, while under the facts in this case the Court cannot direct that the money be returned to the defendants because the parties stipulated that it should remain in the registry of the Court until the ownership thereof was determined by the Court, yet the Court can and should direct the money to be paid into the registry of the Court unless the rights of strangers have intervened, and thereby prevent plaintiff herein from securing an advantage of the defendants by reason of an invalid judgment, which has been reversed by the Supreme Court. The intervenor pleads and insists that the petitioner herein will not be entitled to any

portion of the fund after the retrial of this case for the reason that the intervenor alleges that the petitioner is indebted to the plaintiff herein for a much greater sum than the fund in controversy. But that question cannot be determined in a proceeding of this character. In *re* Florence Cotton & Iron Co. vs. Louisville Banking Co., 36 Southern, 456, at page 457, the Court said, among other things:

“In *Ex parte* Walter, *supra*, the question arose in the chancery court which had undoubted jurisdiction to determine it on equitable principals and this court said with reference to a party who had enforced the collection of money on a decree thereafter reversed: ‘He had no right to the money involved in the litigation in contemplation of law until there should be a correct determination of the matters in dispute, however clear his rights may have been in point of fact. He therefore proceeds with the cause having an undue advantage of his adversary and is in fact in the attitude of having enjoyed what he claimed before the right to it had or could have been determined. We entertain no doubt, therefore, of the absolute right to have restitution made on the one hand and the absolute correlative duty to make restitution on the other wholly regardless of consideration looking to the final equities of the parties.’ We adopt this latter expression as applicable to this case and accordingly hold that the existence of the debt claimed by Field in the suit by Thomas is not a defense in this suit, and this without regard to

the merit of the suit or to the question discussed by counsel of whether the dismissal operated as a retraxit." [76]

In re Walter, 7 Southern, 400:

"The right to restitution cannot in any case be resisted on the grounds that on the final hearing of the cause it will appear that the party of whom the restitution is sought is entitled to the property of which he got possession or to the money that he received under the reversed Judgment."

2 Freeman on Judgments, 4th Ed., Section 482; Hier vs. Anheuser-Busch Brewing Assn., 83 N. W. 77; First National Bank of Fort Scott v. Elliott, 55 Pac. 880; Denning v. Yount, 71 Pac. 250; Reynolds v. Housmer, 45 Cal. 616; Delano v. Wild, 71 Am. Dec. 687; James v. Hacker, 5 Mass. 264; Cumings v. Noyes, 10 Mass. 433; McGilton v. Love, 54 Am. Dec. 449; Fortsman v. Schulting, 15 N. E. 366.

If the defendants should prevail in this action it certainly would be inequitable to permit the counsel for plaintiff to satisfy their judgments against the plaintiff out of funds belonging to the defendants; and the proper method of determining title to the fund in controversy as between the plaintiff and the defendants in this action is by trial of this action. The judgment heretofore entered has been set aside by the Supreme Court and a new trial directed. It must be obvious, both from reason and authority, that who will prevail in this action and whether the plaintiff may recover any judgment from the de-

fendants, or either of them, is a matter that cannot be determined in this special proceeding for a summary restitution.

Proceeding now to a consideration of the fourth objection interposed by the intervenor and the trustee to the granting of the petition herein, it becomes necessary to review the facts as disclosed by the pleadings and evidence. The action of *Chambers vs. LaFarge et al.*, in which a temporary restraining order was procured by the execution of the bond referred to, was commenced several months prior to October, 1909, the time which the trustee claims the plaintiff delivered the fund to him to be held by him in trust for the protection of said sureties [77] against any liability by reason of the signing of said injunctional bond. The trustee refers to a certain contract between himself and Chambers, a copy of which is attached to the answer of the trustee to the petition herein, and the trustee alleges that he is holding said fund under and by virtue of that contract; but it is clear from an examination of that instrument that it makes no reference whatever to the fund in controversy in this action. It does refer to a deed to certain property by the plaintiff to the trustee to be held in trust by him for the protection of said sureties, but it neither expressly nor by implication refers to the fund sought to be recovered by the petition herein. The answer of the trustee does allege as follows:

“That upon presentation of said order the said Miners & Merchants' Bank cancelled the said certificate of deposit and said money was

placed to the credit of plaintiff J. J. Chambers; that thereafter the said Chambers deposited with this answering defendant as said trustee for the said bondsmen above named, the sum of \$11,-106.00, which said money was the property of said plaintiff J. J. Chambers, as this answering defendant is informed and believes, and this answering defendant now holds the same as trustee under the terms and conditions of said trust agreement above set forth.”

As before stated, the agreement referred to and attached to the trustee's answer does not either expressly or impliedly authorize the trustee to hold such fund for any such purpose. The plaintiff Chambers may have directed him to hold said money for such purpose, but there is no allegation that there was any additional agreement between Chambers and the sureties than the one, a copy of which is attached to the trustee's answer. If it be true then that the agreement relied upon by the trustee to authorize him to hold the money as trustee for the protection of the sureties referred to is the one, a copy of which is attached to his answer to the petition, and if the agreement to which he refers confers no such authorization and no other or additional agreement between Chambers and the sureties is pleaded or proved by him, then it must follow that he is not entitled [78] to hold the funds as trustee of Chambers for the protection of strangers to the record against the petitioner herein. But, even if there were such an agreement, it does not appear that there is any consideration therefor. The injunctional bond had been

signed by the sureties months before it is claimed the fund in controversy was delivered to the trustee by Chambers to be held in trust for the protection of such sureties. The sureties had already become liable on the injunctive bond. The claim of the sureties, therefore, that such fund be held as a protection to them against possible liability on such bond cannot prevail against the petitioner who stands before the law, so far as this proceeding is concerned, in the same position as though the appellate court had adjudicated that he was the owner of the fund in controversy; for, as has been before stated, the question as to who will prevail in this action cannot be considered in these proceedings, and the right of the defendants in this action to restitution of the money collected by the plaintiff under and by virtue of the judgment of this Court, which has heretofore been reversed, is the same as though the appellate court had adjudicated him to be the owner of such fund and had actually directed restitution of the same.

For the reasons hereinbefore assigned, the petition of the defendant Waskey will be allowed. Let an order be entered to that effect.

Given in open court at Ketchikan, Alaska, this 15th day of October, 1912.

THOMAS R. LYONS,
Judge of the District Court.

[Endorsed]: No. 1629. In the District Court of the United States for the Div. No. 2 of Alaska. J. J. Chambers, Plaintiff, vs. Andrew Eadie, J. Potter Whittren and Frank H. Waskey, Defendants. W. A. Gilmore, Intervenor. J. J. Cole, Trustee. Opin-

ion, Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Dec. 20, 1912. John Sundback, Clerk. By ———, Deputy. L. [79]

In the District Court for the District of Alaska, Second Division.

No. 1629.

J. J. CHAMBERS,

Plaintiff,

vs.

ANDREW EADIE, J. POTTER WHITTREN and
FRANK H. WASKEY,

Defendants.

W. A. GILMORE,

Intervenor.

J. J. COLE,

Trustee.

**Order [Directing J. J. Cole to Pay Certain Moneys
into Registry of Court, etc.]**

This matter coming on for hearing on the petition of Frank H. Waskey, one of the defendants, for an order requiring J. J. Cole to show cause why he should not pay a certain fund of Eleven Thousand One Hundred and Six Dollars into the registry of this Court; and the Court having heretofore heard the evidence adduced by said petitioner, said trustee J. J. Cole, and the intervenor herein; and having thereafter taken the same under advisement; and having thereafter made its Findings of Fact and Conclusions

of Law herein; and the Court being now fully advised in the premises;

IT IS, THEREFORE, ORDERED that the said J. J. Cole forthwith pay into the registry of this Court the said sum of Eleven Thousand One Hundred and Six Dollars, which sum shall be held by the Clerk of this Court in the registry of this Court, to abide the determination of this action or the further order of this Court. And the said intervenor and trustee are hereby granted four months from date hereof within which to prepare, present and file a Bill of Exceptions herein.

Done in open court at Ketchikan, Alaska, October 15, 1912.

THOMAS R. LYONS,
Judge of the District Court. [80]

[Endorsed]: No. 1629. In the District Court of the United States for the Div. No. 2 of Alaska. J. J. Chambers, Plaintiff, vs. Andrew Eadie et al., Defendants. W. A. Gilmore, Intervenor, J. J. Cole, Trustee. Order. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Dec. 20, 1912. John Sundback, Clerk. By _____, Deputy. L. Vol. 10, Orders and Judgments, p. 59. C. [81]

In the District Court for the District of Alaska, Second Division.

No. 1629.

J. J. CHAMBERS,

Plaintiff,

vs.

ANDREW EADIE et al.,

Defendants.

**Proposed Bill of Exceptions of Respondent J. J. Cole
and William A. Gilmore, Intervenor.**

BE IT REMEMBERED, that on the 3d day of September, 1912, the petition of Frank H. Waskey, filed in the above-entitled court and cause, coming on regularly to be heard before the Hon. Thomas R. Lyons, District Judge; Messrs. Ira D. Orton and Albert Fink appearing for petitioner, and Mr. G. J. Lomen and Mr. W. A. Gilmore, appearing for the respondent and intervenor, and the plaintiff, J. J. Chambers, appearing in person.

Thereupon the following proceedings were had:

Mr. Gilmore, on behalf of the respondent, J. J. Cole, filed a demurrer to the petition.

After argument the demurrer was overruled by the Court and an exception was taken and allowed.

Upon motion of Ira D. Orton, petitioner was allowed by the Court to amend the petition by interlineation.

Thereupon the answer of J. J. Cole, respondent, and answer of William A. Gilmore, intervenor, was filed.

Thereupon the plaintiff J. J. Chambers orally consented to the restitution of said fund as prayed for in the petition, but denied some of the matters therein contained.

Thereupon Ira D. Orton filed replies to the answers of J. J. Cole and William A. Gilmore. [82]

AND BE IT FURTHER REMEMBERED that on said 3d day of September, 1912, said matter being at issue, came on for hearing before Hon. THOMAS R. LYONS, District Judge, on the pleadings as thus stated, and thereupon J. J. Cole was called and duly sworn as a witness on behalf of the defendant Waskey, and testified as follows:

Testimony of J. J. Cole [for Defendant Waskey].
(Examination by Mr. FINK.)

My name is J. J. Cole; I am manager of the Miners & Merchants' Bank in Nome; I am the gentleman on whom the order to show cause was served in these proceedings.

Q. You recall the occasion in October, 1909, when Mr. Gilmore presented to you an order of Court directing that certain funds that the Miners and Merchants' Bank had theretofore held subject to the order of the Court in the case of Chambers vs. Eadie, should be turned over to the plaintiff in the case, Dr. Chambers?

A. I think there was such an order. (Continuing.) I do not know the time,—I do not even remember the occasion. I think that on the 29th of October or the 30th, the cashier of the Miners & Merchants' Bank turned over to me a certificate of de-

(Testimony of J. J. Cole.)

posit made out in the name of J. J. Cole, Trustee, in the sum of fourteen thousand dollars. I have that certificate with me.

Mr. FINK.—We offer it in evidence.

Mr. GILMORE.—No objection.

Mr. FINK.—(Reads:) “This certifies that _____ has deposited in this bank fourteen thousand four hundred forty-eight and 30/100 Dollars, payable to the order of J. J. Cole, Trustee, on the return of this certificate, properly [83] endorsed. Signed. C. G. Cowden, Cashier.”

Q. The signature on the back, “J. J. Cole,” that is your signature on the back?

A. Yes, sir. (Continuing.) This certificate of deposit came from the Miners & Merchants’ Bank, that is the original certificate.

Q. Now this also has stamped across the face of it, “Miners & Merchants’ Bank of Alaska, October 30, 1909. Paid. Nome, Alaska.”

A. Yes, sir. (Continuing.) I think the certificate was made out October 29, 1909. It was made out to me as trustee, to my order. I suppose the bank deposited the money; it was the proceeds of the bullion left over in the Bon Voyage case. I suppose the cashier of the bank deposited this money to my credit as trustee, on the 29th of October, 1909; that certificate as I take it was made from the proceeds of the bullion from the Bon Voyage litigation.

Q. Was there another certificate before this?

A. The original certificate.

Q. Where is it? A. Here it is.

(Testimony of J. J. Cole.)

Mr. FINK.—The first certificate I read is marked Exhibit “A.” We will call this Exhibit “B,” and offer it in evidence.

Mr. GILMORE.—All right.

Mr. FINK.—(Reads:) “No. 11321. Miners & Merchants’ Bank of Alaska. Certificate of Deposit. This certifies that on account of Bon Voyage suit No. 1052, have deposited in this bank fourteen thousand four hundred forty-eight and 30/100 Dollars, payable to the order of U. S. District Clerk on return of this certificate properly [84] endorsed.” Signed, “A. W. Kah, Assistant cashier.” Stamped, “Not over \$16000” and “Not subject to check”; also “Miners & Merchants’ Bank of Alaska, Oct. 29, 1909, Paid. Nome, Alaska.” And on the back, “Paid by order of Court, October 29, 1909.”

Q. Do you know whose writing that is on the back?

A. That is mine.

Q. Now, this certificate of deposit, Exhibit “B” that I have just read, represents what, Mr. Cole?

A. Well, I suppose it represents gold that had been taken out of the Bon Voyage claim and deposited, and in the case of Chambers vs. Eadie. (Continuing.) I wasn’t in the bank at the time, I know nothing further than what it says on the certificate itself; what it shows us on the back of the original certificate there, the assay certificate.

Mr. FINK.—We offer the assay certificate in evidence as Exhibit “C.”

Mr. GILMORE.—No objection.

Mr. FINK.—(Reads:) No. 1052. Gold bullion

(Testimony of J. J. Cole.)

deposited in the Miners & Merchants' Bank of Alaska, the 6th day of June, 1907, by royalty Bon Voyage claim. Net before melting, 814.14 oz. net after melting, 795.60 oz. Fine \$18.67. Total value \$14,855.68. Charges \$371.38, net \$14,484.30. A. W. Kah, Assayer."

Q. Now, Mr. Cole when did you become manager of the Miners & Merchants' Bank?

A. I think it was in the fall of 1908. (Continuing.) At that time the Miners and Merchants' Bank had in its possession bullion of the net value of \$14,484.30 deposited with it in the case of Chambers vs. Eadie; after that the bullion was by order of Court reduced to bar and the bar was shipped out and sold, and Exhibit "C" represents the proceeds of that particular bar. [85]

Q. So the proceeds of the sale of the gold bar were deposited in the Miners & Merchants' Bank, and this certificate of deposit was issued as evidence of that fact?

A. Held it there—after the assay of the bullion a credit was made for the value of the bar represented in that certificate you have got there, after we had sold it. (Continuing.) We sold it outside; that is the assay value of the bar.

Q. But this certificate of deposit represents the fund that you deposited in the bank in lieu of the gold?

A. Not the fund I deposited. The fund I deposited is the other certificate.

Q. I am talking about the original \$14,484.30 worth

(Testimony of J. J. Cole.)

of bullion there?

A. That was deposited to the credit of the U. S. District Court.

Q. Now, the bullion that the bank took over, what did you place in the bank in lieu of the bullion?

A. What you got in your hand there. (Continuing). That certificate represents the value of the bullion.

Q. So in place of the bullion you gave a credit of \$14,484.30?

A. To the U. S. District Court.

Q. Exactly; and this is the evidence of credit you issued, this certificate of deposit dated June 7, 1909?

A. It was issued, I did not issue it.

Q. Now, do you know who brought this certificate of deposit to you in October, 1909?

A. I suppose it was handed to me by Mr. Cowden. (Continuing.) That first certificate was in the possession of the bank all the time.

Q. Now, on October 29, 1909, Mr. Gilmore came in didn't he, [86] with an order of the Court?

A. Yes, sir.

Q. And you then got this certificate of deposit out?

A. Somebody got it out.

Q. Just relate what happened then.

A. As I said before, I don't know whether Mr. Gilmore was there when the certificate was handed me, I think he left instructions that it was to be handed to me; that is all I know as the certificate was made out and handed to me to hold as trustee. (Continuing.) I think that when Mr. Gilmore

(Testimony of J. J. Cole.)

brought the order of the Court, the transaction was had with Mr. Cowden, cashier, who issued the other certificate and gave it to me. The certificate of October 29, 1909, was cancelled and the other certificate issued. That is certificate B was cancelled and certificate A issued in lieu of certificate B.

Q. This certificate A represents the same identical fund that certificate B had represented?

A. Yes, sir, if the amount is the same it did.

Q. What?

A. If the amount is the same it did.

Q. Did it or did it not? And if not what other fund?

A. I suppose it represented the same fund.

Q. Mr. Cowden cancelled Exhibit "B" and delivered you certificate A? A. Yes, sir.

Q. What did you do with certificate A?

A. Well, on either that day or the next, I don't know which, according to the cancellation of the certificate, Dr. Chambers drew some of the money to pay an indebtedness that he had with the bank, which reduced this certificate to \$11,106.00. [87]

Q. How did he draw it down?

A. By receipting the certificate and reducing it to \$11,106, leaving in my possession \$11,106.00. (Continuing.) I think there was a certificate or credit in the bank. At that time Dr. Chambers owed the bank something over three thousand dollars. I couldn't tell you exactly from memory.

Q. Now, what I want to know is this—did Chambers and Gilmore come in and simply say to you de-

(Testimony of J. J. Cole.)

duct what Chambers owed the bank from this and deposit the balance with yourself as trustee?

A. Yes, sir.

Q. That was what was done? A. Yes, sir.

Q. Very well, then, you deposited with yourself as trustee, under directions of Dr. Chambers and Mr. Gilmore, the identical fund which was represented by this certificate B and the certificate A?

A. Yes, sir.

Q. Less what Dr. Chambers owed the bank?

A. Yes, sir.

Q. Now, that fund has remained in your possession ever since? A. Yes, sir.

Q. You still have possession of it?

A. Yes, sir.

Q. You have also possession of other funds besides that belonging to Dr. Chambers?

A. Other funds in trust besides that.

Cross-examination by Mr. GILMORE.

Q. Now, you say this fund remained there. What do you mean?

A. I mean the fund deposited by the U. S. District Clerk.

Q. Now, was there ever deposited by the U. S. District Clerk any specie, coin or money at any time?

A. No, sir. [88]

Q. Was there ever any specie or money involved in any of these transactions at the time of the issuing of these certificates of deposit?

A. No money ever changed.

Q. Now, Mr. Cole, if I understand you correctly,

(Testimony of J. J. Cole.)

at the time the first order was issued by the Court to melt the money, June 7, 1907, the bank then sold the gold, got the gold into the bar and sold it?

A. Forwarded it outside and they credited us, as coming to the U. S. District Clerk.

Q. No specie or money transaction whatever occurred, the bank just issued the Clerk of the Court a certificate of deposit?

A. According to the assay report.

Q. You simply sent the bar outside and got credit outside for it?

A. Well, I presume that was what was done by the bank at that time as that is the usual custom when we ship bullion out there and I presume it was the same in this case. (Continuing.) I don't remember whether I was present at the time you came in with the Court's order on October 29, or not, I may have been in my office; I can't remember what transactions took place at that time, all I remember was the certificate was given to me, calling for that much money in the certificate. Prior to that time and about the 11th day of June, 1909, I became trustee for Dr. Chambers to protect his bondsmen, Mr. Rowe, Mr. McMannus and others. I am the same Cole mentioned in the deed of trust and in the agreement, set up in the pleadings.

Q. Now, when this certificate of deposit was handed to you by Mr. Cowden, Cashier of the Miners & Merchants' Bank on October 29th, 1909, why was it delivered to you? [89]

A. As trustee of Dr. Chambers, under a written

(Testimony of J. J. Cole.)

trust for these sureties I have just named.

Q. And did you hold the certificate thereafter, that amount of money under it?

A. Yes, sir. (Continuing.) At the time Dr. Chambers directed me to deduct the amount of his indebtedness to the bank, the same was done and his notes for something over three thousand dollars were delivered to him and the new certificate in the sum of \$11,106.00 was made out to myself as trustee for these sureties.

Q. Was there any money transaction so far as the certificate was concerned? A. No.

Q. Was anything ever said as to how you were to hold it? A. No, sir.

Q. Did you receive it as agent of the bank?

A. I have always held that fund as trustee. (Continuing.) Under the written trust I have mentioned for said sureties. There was nothing in the trust to compel me to keep the money in the Miners & Merchants' Bank, I could have kept it in the Scandinavian-American Bank, of Seattle, or elsewhere, under the terms of the trust. I have only held this certificate of deposit only for convenience. At the time Dr. Chambers received his notes and the indebtedness to the bank was satisfied and the certificate issued, it was understood that Dr. Chambers was to go up and satisfy the judgment record to that amount. I never saw the satisfaction but I was told that he had satisfied it. At the time I talked to you and Dr. Chambers in the bank you instructed him to satisfy the record.

(Testimony of J. J. Cole.)

Q. No cash, coin or specie of any kind was delivered by anyone on this date to you, Mr. Cole, other than this certificate of deposit? A. No. [90]

Redirect Examination by Mr. ORTON.

Q. When that new certificate was handed you, after paying the Miners & Merchants' Bank, it was for \$11,106.00? A. Yes, sir.

Q. And was payable to you as trustee?

A. Yes, sir.

Q. There was also money behind these certificates of deposit to take them up?

A. The bank had stood responsible for the amount that had been deposited on them.

Recross-examination by Mr. GILMORE.

Q. Did the bank have anything to do with this matter after paying the first certificate?

A. No, sir.

Q. You had a credit there for this money?

A. Yes, sir.

Re-redirect Examination by Mr. ORTON.

Q. In your name as trustee? A. Yes, sir.

Cross-examination by J. J. CHAMBERS.

Q. You stated that Mr. Gilmore and myself and you, were present there, now are you sure about that? A. What do you mean?

Q. When the settlement was made for the transfer of the money, are you sure the three of us were all there at the same time?

A. What time do you refer to?

Q. The order of the District Court to transfer the money [91] over to me, when the order was made?

(Testimony of J. J. Cole.)

A. I don't think I said so. You must have misunderstood me.

Q. You don't know whether that was on the same day Mr. Gilmore was there or not?

A. It seems to me that it was the next day that you came in.

Q. Mr. Gilmore was not there at that time?

A. He came in with you and you came into my office and as I remember the conversation that took place between you and Gilmore, this money had been deposited as security and Gilmore consented for you to pay your indebtedness before all this money went into the fund for all these creditors.

Q. We didn't have any misunderstanding about the settlement, it was all satisfactory, wasn't it?

A. All satisfactory.

Thereupon WILLIAM A. GILMORE was called as a witness on behalf of the petitioner Waskey, and being duly sworn, testified as follows:

Testimony of William A. Gilmore [for Petitioner Waskey].

Direct Examination by IRA D. ORTON.

Q. Mr. Gilmore, the attachment which you refer to in paragraph 4 of your answer in this case was levied in an action at law brought by you as plaintiff against J. J. Chambers, to recover attorneys' fees alleged to be due from J. J. Chambers to yourself for services in this and other cases?

A. Yes, sir; quite a few of them.

Q. The attachment referred to under paragraph 5 of Cornelius D. Murane vs. J. J. Chambers was lev-

(Testimony of William A. Gilmore.)

ied in a suit brought by Cornelius D. Murane vs. J. J. Chambers for attorneys' fees rendered in this very case, was it not? [92]

A. For services, as I recollect, performed on the trial of Chambers vs. Eadie, the same case, and for work done in the Appellate Court in the same case.

Q. In other words, you and Judge Murane were both formerly Dr. Chamber's attorneys in this case?

A. Yes, sir.

Cross-examination by J. J. CHAMBERS.

Q. Mr. Gilmore, how was this money transferred from the bank?

A. I secured an order of Court of date the 29th of October, signed by Judge Moore, who then presided in this Court, and immediately went down to the Miners & Merchants' Bank and presented it to Mr. Cowden who was standing there at the cashier's window. Mr. Cole was also standing in back, and I asked them to turn over to the plaintiff, Chambers, the sum of money mentioned in the order; my recollection is that Mr. Cole was busy on some other matters and I asked Mr. Cowden to get the original certificate and pay it and cancel it, and informed him that you would be down probably that day or the next, and in the meantime Cole could hold the certificate, or have a credit there until such time as we could make arrangements or assign the certificate to the trustee; no cash, specie, coin or money passed between Mr. Cole or any officer of the bank.

Q. Was there any money paid to me?

A. The next day or the day after this transaction

(Testimony of William A. Gilmore.)

you went into the bank and I happened to be in there or you sent for me to come down there, and I explained what had been done the day before and you said it was satisfactory to you and Mr. Cole asked me if I had any [93] objections to the trustee paying what you owed the bank, and I had none and he proceeded to have your notes cancelled and returned them to you and issued a new certificate evidencing your credit for the amount; when the second certificate was issued no money passed in any way between the parties.

Q. Don't you remember, Mr. Gilmore, that for a month or six weeks we had been quarreling on account of this transaction, about this receipting on the record?

A. My recollection is at this time, that in the presence of Mr. Cole I told you to go right up to the courthouse and satisfy the judgment record; and I also remember that you did not come back for several days, and I think that sometime afterwards when I looked at the docket, that it had been satisfied and bears date of October 30th. I wish to state further that this satisfaction is of date October 30th, the day you were in the bank, and I think that the record shows that the satisfaction is made in your own handwriting.

Redirect Examination by Mr. ORTON.

Q. You testified in the case of William A. Gilmore vs. J. J. Chambers, did you not? A. Yes, sir.

Q. Did you not testify in that case as follows: "The following morning I filed the mandate and had

(Testimony of William A. Gilmore.)

the execution issued, served a copy on J. J. Cole, the president of the bank, and Cole turned the money over in my presence and under my direction to himself as trustee, it having been assigned to him as trustee for the bondsmen? [94]

A. Yes, I presume I did.

Q. Did you further testify as follows: "I immediately notified the Dr. to satisfy the judgment. He did so about six weeks afterwards to that amount, \$14,483.00."

A. Yes, it might have been six weeks, I don't remember the exact time, I think the order was dated the 29th of October, and it is my recollection that I told him to satisfy it the next day.

Q. That was the date of the delivery of the new certificate to Mr. Cole?

A. I don't recollect that I said that was the date.

Q. Well, you were there when it was done?

A. I do distinctly recall coming into the bank and telling either Mr. Cole or Mr. Cowden—telling them to leave that credit to Dr. Chambers and that we had been talking about it between ourselves and that I left it as I had to look him up and bring him in.

Q. Your recollection, of course, was very good about this matter at the time you testified in the case of Gilmore vs. Chambers?

A. I don't believe any better than now, about the same.

Q. And on that trial you testified as follows: "The following morning I filed the mandate and had the execution issued, served a copy on J. J. Cole the presi-

(Testimony of William A. Gilmore.)

dent of the bank, and Cole turned the money over in my presence, and under my direction to himself as trustee, it having been assigned to him as trustee for the bondsmen."

A. If it is in the record I certainly did.

Q. And that was correct, of course?

A. Well, within a day or two—that is, I filed the mandate before I got the order of the Court. [95]

Q. Well, was it true as you testified?

A. Yes, as I have explained it to you, the transaction occurred exactly as I have told you.

Q. Occurred as you testified on the trial?

A. In substance it did.

Q. Yes. A. I don't see any difference.

Q. You say there had been an assignment of this fund to the bondsmen, this fund in the bank?

A. By the agreement and deed referred to on the 11th day of June, 1909.

Q. Show me where in the deed?

A. Appears for itself.

Q. Point it out then.

A. (Witness reads:) "Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereto and all judgments, rents, issues and profits therefrom, and all damages appertaining thereto, now of record or otherwise."

Q. You claim, as I understand it, that by deeding the Bon Voyage claim to J. J. Cole he assigned to

(Testimony of William A. Gilmore.)

J. J. Cole the gold-dust that had been taken out of the Bon Voyage, that deed that is in evidence?

A. No, sir, at the time this trust deed was made, June 11th, 1909, the gold had been sold by the bank and this certificate was held by the bank for it.

Q. The gold had been sold, so that by conveying to Cole the Bon Voyage, he conveyed to Cole also the money that was in the bank?

A. He conveyed to Cole all his right, title and interest in [96] placer claim 51½ Little Creek and the Bon Voyage placer claim.

Q. Was there any other assignment other than that?

A. No, sir. (Continuing.) I would like to explain that the intent was to convey on the part of Dr. Chambers—Chambers to convey to J. J. Cole for their use and benefit all the property that he had in the Nome District in the way of placer claims. All interest therein and judgments for damages.

Mr. FINK.—I can't see where this is material at all. You can't vary this deed by stating what the intention was.

Mr. GILMORE.—It certainly goes to show that Cole was Trustee of these interests for Chambers.

Cross-examination by Mr. LOMEN.

Q. You had better explain the conversation had in your presence, between Dr. Chambers and Mr. Cole, in regard to the transaction, when this \$11,106.00 was deposited.

A. The substance of the conversation was that Dr. Chambers was to settle his indebtedness to the Min-

(Testimony of William A. Gilmore.)

ers & Merchants' Bank. Mr. Cole wanted to know whether I would make any objections to it and I assured them that there would be no objection to the Doctor paying his indebtedness that was due under his notes. The conversation was quite lengthy but the substance of it was that the notes should be paid, and that the remainder coming under the certificate should remain there with Mr. Cole as trustee, under the trust agreement deed of June 11th, 1909.

Petitioner Waskey rests. [97]

Thereupon William A. Gilmore, for the respondent J. J. Cole and for the intervenor, offered in evidence partial satisfaction of judgment signed by J. J. Cole in case of Chambers vs. Eadie, and the same was admitted in evidence as it appears in Vol. 2, page 40, and marked Respondent's Ex. No. 1, said exhibit being a partial satisfaction of the judgment in Chambers vs. Eadie to the extent of \$14,484.30, bearing date October 30, 1909; and

Thereupon the mandate of the Circuit Court of Appeals in the case of Chambers vs. Eadie was admitted in evidence without objection read and marked Respondent's Exhibit 2; and

Thereupon the order of Court of date October 29, 1909, was offered in evidence and admitted without objection, read and marked Respondent's Exhibit No. 3.

Thereupon IRA D. ORTON was called as a witness on behalf of respondent and intervenor, and testified as follows, being first duly sworn:

**Testimony of Ira D. Orton [for Respondent and
Intervenor.]**

Direct Examination by Mr. GILMORE.

Q. You are the Ira D. Orton mentioned here in the answer of Mr. Cole, as being the plaintiff in the case of Orton vs. Chambers, an attachment proceeding?

A. Yes, sir.

Q. You caused to be issued in this suit an attachment against this fund?

A. Yes, I did. Not this fund we are talking about here, whatever money Mr. Cole might have.

Q. In Mr. Cole's possession?

A. Yes, there are other large amounts of money.
[98]

Q. This and other money?

A. If we could hold it; if, however, the Court should decide it should not be paid over, we still claim my attachment on it.

Q. Mr. Orton, in that suit you appear as plaintiff in the capacity of representing petitioner Waskey for his creditors, do you not?

A. The papers in the suit speak for themselves, and as you know, I appear as trustee for the creditors of Waskey under certain deeds of assignment to me of certain property of Waskey's.

Q. Any proceeds after Waskey's creditors are paid, the residue from his property goes back to him?

A. That was not mentioned.

Q. That was understood?

A. There never was any understanding. (Continuing.) Waskey never had any understanding,

(Testimony of Ira D. Orton.)

that is, that he expressed to me; the property was conveyed to me in trust for the creditors.

Q. Were you one of the creditors?

A. I believe Mr. Waskey owes me money, money that I have advanced for costs, something like that.

Q. Are you willing to waive your rights in order to get this fund transferred into court?

A. No, sir, I am not willing to waive anything.

Q. Would not cancel it for them? A. Yes.

Q. Because you represent Waskey in one suit as trustee for the creditors and in the other as counsel for Waskey?

A. I represent the trustee on one suit because the trustee happens to own the cause of action, the trustee paid money out of the trustee fund to protect the property and for that reason I brought the suit in his name [99] to protect it.

Q. Now, does Waskey get any benefit himself under the agreement?

A. It benefits him to that extent. I presume so.

Thereupon J. J. CHAMBERS was called as a witness on behalf of respondent and intervenor and being first duly sworn testified as follows:

Testimony of J. J. Chambers [for Respondent and Intervenor].

Direct Examination by Mr. GILMORE.

Q. Now, in the Chambers-Eadie, the original suit out of which all these affairs have arisen between you and Mr. Waskey, state to the Court if you lost your legal interest therein or do you claim an equitable interest.

(Testimony of J. J. Chambers.)

Mr. FINK.—Objected to as immaterial to the issues in this matter.

The COURT.—The objection is sustained and an exception allowed.

Mr. GILMORE.—I would like to make an offer.

The COURT.—Proceed.

Mr. GILMORE.—I offer to show by this witness that he has coming on the ultimate trial of this case from the petitioner Waskey, and his codefendant, a large sum of money, to wit: six to eight thousand dollars, and in addition to that that he claims he owns by deed the Andrew Eadie interest in the property.

Mr. ORTON.—That is objected to as immaterial.
[100]

The COURT.—Sustained, to which ruling of the Court an exception was allowed.

[Testimony of William A. Gilmore, for Respondent and Intervenor (Recalled).]

Thereupon the respondent and intervenor recalled the witness WILLIAM A. GILMORE, who testified as follows:

I desire to offer in evidence the minutes of the Court, dated August 23d, 1910, in the case of William A. Gilmore vs. J. J. Chambers, and to read the same into the record.

The COURT.—You may proceed.

Thereupon Mr. Gilmore read into the record the minute entry contained in Vol. 16 of the records of the Court at page 571 as follows:

“This cause came on on the oral application of counsel for defendant, J. J. Chambers, before

Special Judge B. S. Rodey, to fix supersedeas on Writ of Error herein, Mr. William A. Gilmore, for the plaintiff appearing and contending that the supersedeas should be fixed in the amount of the judgment, and the defendant J. J. Chambers, through Parke Godwin, Esq., his attorney, contending that the supersedeas should be merely nominal inasmuch as the judgment was fully secured by attachment liens.

Thereupon Special Judge B. S. Rodey delivered an oral opinion on the application, stating that inasmuch as the judgment upon which the Writ of Error was sought to be sued out is fully secured by an attachment lien, and also a general judgment lien on the property of the defendant that a nominal bond should only be required, and ordered that on a written application being filed therefor, an order be entered granting the application for a Writ of Error and that the cost bond on error be fixed in the sum of Two Hundred and Fifty Dollars, and that when said bond is duly filed it shall suspend execution herein without affecting any legal liens or plaintiff's right to have same protected, now existing as security to the defendant in error pending the hearing on the Writ of Error now before the Circuit Court of Appeals.

On motion of William A. Gilmore, plaintiff was granted leave to file a motion to require defendant, J. J. Chambers, to pay into court certain monies, the proceeds of attachment proceed-

(Testimony of William A. Gilmore.)

ings heretofore received by him from the United States Marshal, T. C. Powell.

On motion of Parke Godwin, attorney for defendant, the defendant was granted ten days additional time in which to serve and file a bill of exceptions on the motion to set aside the judgment herein, relative to the attached property and vacate the judgment levied under the alias Writ of Attachment.”

Mr. GILMORE.—In order to show the Court that this particular fund now being litigated was a part of the property garnished in the [101] case of *Gilmore vs. Chambers*, I now offer in evidence the Writ of Attachment and the Marshal’s return thereto.

The COURT.—It may be received in evidence and properly marked by the clerk.

(Recital:) The said marshal’s return shows the garnishment of this same identical fund.

Thereupon Mr. Lomen, on behalf of respondent and intervenor, offered in evidence the judgment in the case of *Murane vs. Chambers* No. 2325, and the same was received and read in evidence without objection, and properly marked; also the judgment in the case of *William A. Gilmore vs. J. J. Chambers*, which was received in evidence and read to the Court and properly marked by the clerk.

Testimony closed.

BE IT FURTHER REMEMBERED, that the said cause was thereupon argued to the Court by counsel for the petitioner, Waskey, and counsel for

respondent and trustee Cole, and intervenor Gilmore, and duly submitted to the Court for decision and thereafter, on the 15th day of October, 1912, the Court rendered its opinion and made its written order in favor of petitioner Waskey and against respondent and intervenor, and directed by said order that said fund be turned into the registry of the Court; and thereupon the respondent and intervenor excepted to the said decision and order of the Court and the exception was allowed.

Now, within the time allowed by law, the respondent and intervenor present this their bill of exceptions and pray that the same may be settled and allowed by the Court.

Dated at Nome, Alaska, this 11th day of December, A. D. 1912.

G. J. LOMEN and

WILLIAM A. GILMORE,

Attorneys for Respondent and Trustee J. J. Cole
and Intervenor William A. Gilmore. [102]

[Order Settling and Allowing Bill of Exceptions.]

The above and foregoing Bill of Exceptions having been served, filed and presented for settlement within the time allowed by law, and being now found full, true and correct, containing all of the evidence introduced at the trial, the same is now settled and allowed.

Done in open court this 14 day of January, A. D. 1913, at Nome, Alaska.

CORNELIUS D. MURANE,

District Judge.

Service of the above and foregoing Bill of Exceptions is hereby admitted this 11th day of December, 1912.

O. D. COCHRAN,
Of Attorneys for Petitioner Waskey.

[Endorsed]: No. 1629. In the District Court for the District of Alaska, Second Division. J. J. Chambers, Plaintiff, vs. Andrew Eadie et al., Defendant. Proposed Bill of Exceptions of Respondent J. J. Cole and William A. Gilmore, Intervenor. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Dec. 13, 1912. John Sundback, Clerk. By ———, Deputy. William A. Gilmore, Attorney at Law, Nome, Alaska, Attorney for Intervenor. Vol. 10, Orders and Judgments, p. 75. C. Refiled in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Jan. 14, 1913. John Sundback, Clerk. By J. A. B., Deputy. [103]

[Minutes of Court—December 28, 1912.]

*In the District Court for the District of Alaska,
Second Division.*

TERM MINUTES, Special October, 1912, Term,
Beginning October 21, 1912.

Saturday, December 28, 1912, at 10 A. M.

Court convened pursuant to adjournment, Hon. CORNELIUS D. MURANE, District Judge, Presiding.

Upon the convening of Court the following proceedings were had:

1629.

CHAMBERS

vs.

EADIE et al.

Upon motion of Mr. William A. Gilmore the settlement of the proposed bill of exceptions of J. J. Cole and W. A. Gilmore was set for Saturday next at 10 o'clock A. M. [104]

[Minutes of Court—January 4, 1913.]

*In the District Court for the District of Alaska,
Second Division.*

TERM MINUTES, Special October, 1912, Term,
Beginning October 21, 1912.

Saturday, January 4, 1913, at 10 A. M.

Court convened pursuant to adjournment, Hon. CORNELIUS D. MURANE, District Judge, Presiding.

Upon the convening of Court the following proceedings were had:

.

1629.

CHAMBERS

vs.

EADIE et al.

Upon motion of Mr. William A. Gilmore, the settlement of proposed bill of exceptions of J. J. Cole, trustee, and William A. Gilmore, intervenor, was

continued over the term and set for hearing and settlement on January 11, 1913. [105]

[Minutes of Court—January 11, 1913.]

*In the District Court for the District of Alaska,
Second Division.*

TERM MINUTES, General 1913 Term, Beginning
January 6, 1913.

Saturday, January 11, 1913, at 10 A. M.

Court convened pursuant to adjournment, Hon.
CORNELIUS D. MURANE, District Judge, Pre-
siding.

.
Upon the convening of Court the following pro-
ceedings were had:

1629.

J. J. CHAMBERS

vs.

EADIE et al.

Mr. William A. Gilmore presented bill of excep-
tions for settlement, and the same was taken under
advisement by the Court until 11 A. M. Monday,
January 13, 1913.

Upon motion of Mr. Gilmore he was permitted to
withdraw said bill of exceptions and amend the same
by interlineation. Thereupon Mr. Gilmore pre-
sented and filed assignment of errors upon appeal
to the Circuit Court of Appeals for the Ninth Cir-
cuit; also petition for an order allowing appeal; also
order allowing appeal and fixing the amount of cost
bond, which was signed by the Court and filed; also
cost bond and order approving same; also presented

citation on appeal; also presented and filed order enlarging time to the 1st day of August, 1913, in which to file record on appeal in the Circuit Court of Appeals.

Mr. O. D. Cochran, on behalf of respondent, stated in open court that he had no objection to the signing of said appeal papers by the Court, and further stated that the cost bond and sureties thereon were satisfactory to the respondent.

Mr. Gilmore, on behalf of appellants, presented order for severance which was taken under consideration by the Court until 11 A. M. Monday, January 13, 1913. [106]

[Minutes of Court—January 14, 1913.]

*In the District Court for the District of Alaska,
Second Division.*

TERM MINUTES, General 1913 Term, Beginning
January 6, 1913.

Tuesday, January 14, 1913, at 11 A. M.

Court convened pursuant to adjournment, Hon. CORNELIUS D. MURANE, District Judge, Presiding.

Upon the convening of Court the following proceedings were had:

1629.

J. J. CHAMBERS

vs.

EADIE et al.

The bill of exceptions of J. J. Cole, Trustee, and William A. Gilmore, Intervenor, heretofore filed

herein, came on regularly for hearing and settlement.

Mr. William A. Gilmore, on behalf of trustee and intervenor, stated that with the permission of the Court, he and Mr. O. D. Cochran representing respondent, had agreed upon the amendments to the bill and the bill had been amended by interlineation, as directed by the Court.

Thereupon the Court signed an order approving said bill of exceptions and directed the same to be refiled.

The plaintiff, J. J. Chambers, asked the Court to have the minutes of the Court corrected in certain particulars, but the Court refused to make any corrections of the minutes that were made during the time that Judge Lyons presided over the Court.

The Court announced that he would refuse to sign the order of severance taken under consideration on Saturday last for the reason that he was disqualified. An exception was asked by appellants and allowed.

Mr. O. D. Cochran, attorney for respondent, consented to the filing of the petition for an order of severance and said order and that said petition and said order be incorporated in the transcript on appeal in this case. [107]

*In the District Court for the District of Alaska,
Second Division.*

No. 1629.

J. J. CHAMBERS,

Plaintiff,

vs.

ANDREW EADIE, J. POTTER WHITTREN
and FRANK H. WASKEY,

Defendants.

J. J. COLE, Trustee,

Respondent.

WILLIAM A. GILMORE,

Intervenor.

Assignment of Errors.

Come now J. J. Cole, Trustee, and William A. Gilmore, intervenor in the above-entitled action, and assigns the following errors upon which they will rely in prosecuting their said appeal to the Circuit Court of Appeals for the Ninth Circuit, from the final order of the Court made on the 15th day of October, 1912, and thereafter entered on the 20th day of December, 1912:

I.

That the Court erred in assuming and taking jurisdiction of the person and property of J. J. Cole, Trustee, without due process of law, or any process of law authorized under the Code of Alaska.

II.

That the Court erred in overruling and denying the demurrer of appellant, J. J. Cole.

III.

That the Court erred in making and entering its final order directing, commanding and compelling the appellant, J. J. Cole, to pay the said fund into the registry of the Court. [108]

IV.

The Court erred in assuming and taking jurisdiction of the said fund described in the said order made on the 15th day of October, 1912, and thereafter entered on the 20th day of December, 1912, and that the Court was without jurisdiction to direct that said fund be paid into the registry of the Court.

V.

The Court erred in overruling and denying the offer of the trustee and Intervenor at the trial of these proceedings to prove by the witness, J. J. Chambers, that he had a substantial interest in the fund in controversy as follows:

“Mr. GILMORE.—I would like to make an offer.

The COURT.—Proceed.

Mr. GILMORE.—I offer to show by this witness that he has coming on the ultimate trial of this case from the petitioner, Waskey, and his codefendant, a large sum of money, to wit: Six to eight thousand dollars as royalty, being a portion of this identical fund and in addition to that, that he claims he owns by deed, the Andrew Eadie interest in the property.

Mr. ORTON.—That is objected to as immaterial.

The COURT.—Sustained and exception allowed.”

VI.

The Court erred in assuming and taking jurisdiction and deciding this proceeding on its merits.

WHEREFORE, said J. J. Cole, Trustee, and William A. Gilmore, Intervenor, pray that the said final order made by [109] the Court on the 15th day of October, 1912, and thereafter entered in the above-entitled court on the 20th day of December, 1912, be reversed and set aside and that said fund be directed to be returned to the said J. J. Cole, Trustee.

G. J. LOMEN and
WILLIAM A. GILMORE,
Attorneys for J. J. Cole, Trustee, and William A.
Gilmore, Intervenor.

Due service of the within assignment of errors is hereby acknowledged by receipt of a copy, this 11th day of January, 1913.

O. D. COCHRAN,
Of Attorneys for Defendant and Petitioner Frank
H. Waskey.

[Endorsed]: No. 1629. In the District Court for the District of Alaska, Second Division. J. J. Chambers, Plaintiff, vs. Andrew Eadie et al., J. J. Cole, Trustee and Respondent and William A. Gilmore, Intervenor, Defendants. Assignment of Errors. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Jan. 11, 1913. John Sundback, Clerk. By J. A. B., Deputy. G. J. Lomen and William A. Gilmore, Attorney at Law, Nome, Alaska, Attorney for Respondent and Intervenor. [110]

*In the District Court for the District of Alaska,
Second Division.*

No. 1629.

J. J. CHAMBERS,

Plaintiff,

vs.

ANDREW EADIE, J. POTTER WHITTREN
and FRANK H. WASKEY,

Defendants.

J. J. COLE,

Trustee.

WILLIAM A. GILMORE,

Intervenor.

**Petition for and Order Allowing Appeal [and Fixing
Amount of Cost Bond].**

Come now J. J. Cole, trustee and respondent, and William A. Gilmore, intervenor in the above-entitled action, and feeling themselves aggrieved by the final order of the Court, made on the 15th day of October and entered on the 20th day of December, 1912, in the above-entitled cause, in favor of defendant and petitioner Frank H. Waskey, and against respondent and intervenor, do hereby appeal from said final order and from the whole and every part thereof, to the United States Circuit Court of Appeals for the Ninth Circuit, and they pray that this their appeal may be allowed; and that a transcript of the record and proceedings upon which said order was made, duly verified, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and that

said appellants further pray that an order be made fixing the amount of a cost bond to be given by said appellants upon said appeal.

Dated at Nome, Alaska, this 11th day of January, A. D. 1913.

G. J. LOMEN and

WILLIAM A. GILMORE,

Attorneys for J. J. Cole, Trustee and Respondent
and William A. Gilmore, Intervenor. [111]

Service of the above and foregoing petition acknowledged by receipt of a copy this 11th day of January, A. D. 1913.

O. D. COCHRAN,

Of Attorneys for Defendant and Petitioner Frank
H. Waskey.

[Endorsed]: No. 1629. In the District Court for the District of Alaska, Second Division. J. J. Chambers, Plaintiff, vs. Andrew Eadie et al., J. J. Cole, Trustee and Respondent, and William A. Gilmore, Intervenor, Defendant. Petition for an Order Allowing Appeal. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Jan. 11, 1913. John Sundback, Clerk. By J. A. B., Deputy. G. J. Lomen and William A. Gilmore, Attorney at Law, Nome, Alaska, Attorney for Respondent and Intervenor. [112]

*In the District Court for the District of Alaska,
Second Division.*

No. 1629.

J. J. CHAMBERS,

Plaintiff,

vs.

ANDREW EADIE, J. POTTER WHITTREN and
FRANK H. WASKEY,

Defendants.

J. J. COLE, Trustee, Respondent.

WILLIAM A. GILMORE, Intervenor.

**Order Allowing Appeal and Fixing Amount of Cost
Bond.**

Upon motion of G. J. Lomen and William A. Gilmore, attorneys for J. J. Cole, Trustee, and William A. Gilmore, intervenor in the above-entitled action,

IT IS ORDERED that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the final order heretofore made on the 15th day of October, and thereafter entered on the 20th day of December, 1912, in the above-entitled action, be, and is hereby allowed and that a certified transcript of the record, testimony, exhibits, stipulations, motions, orders, pleadings and all proceedings herein be forthwith transmitted to the United States Circuit Court of Appeals for the Ninth Circuit.

IT IS FURTHER ORDERED that a cost bond be given by the appellants to the defendant and petitioner, Frank H. Waskey, in the sum of Two Hun-

dred and Fifty Dollars (\$250.00), pending said appeal.

Done in open court this 11th day of January, 1913.

CORNELIUS D. MURANE,

District Judge. [113]

Service acknowledged this 11th day of Jany., 1913,
by receipt of a copy.

O. D. COCHRAN,

Of Attys. for Frank H. Waskey.

[Endorsed]: No. 1629. In the District Court for the District of Alaska, Second Division. J. J. Chambers, Plaintiff, vs. Andrew Eadie et al., Defendants. Order Allowing Appeal and Fixing Amount of Cost Bond. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Jan. 11, 1913. John Sundback, Clerk. By J. A. B., Deputy. G. J. Lomen and William A. Gilmore, Attorneys at Law, Nome, Alaska, Attorneys for Respondent and Intervenor. Vol. 10, Orders and Judgments, p. 74. C. [114]

*In the District Court for the District of Alaska,
Second Division.*

No. 1629.

J. J. CHAMBERS,

Plaintiff,

vs.

ANDREW EADIE, J. POTTER WHITTREN and
FRANK H. WASKEY,

Defendants.

J. J. COLE, Trustee, Respondent.

WILLIAM A. GILMORE, Intervenor.

Cost Bond and Order.

KNOW ALL MEN BY THESE PRESENTS:
That we, J. J. Cole and William A. Gilmore, as principals, and F. A. Daniels and J. A. Bachelder as sureties, are held and firmly bound unto the defendant and petitioner, Frank H. Waskey, in the above-entitled action, in the sum of Two Hundred and Fifty Dollars (\$250.00), to be paid to the said Frank H. Waskey, his heirs, executors, administrators and assigns, to the payment of which well and truly to be made we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, administrators and assigns, firmly by these presents.

Sealed with our seals and dated this 11th day of January, A. D. 1913.

The condition of the above undertaking and obligation is that,

WHEREAS, the above-named J. J. Cole, trustee

and William A. Gilmore, intervenor, have filed their petition for an appeal and have taken an appeal in the above-entitled cause to the United States Circuit Court of Appeals for the Ninth [115] Circuit to reverse the final order of the above-entitled court made on the 15th day of October, 1912, and entered on the 20th day of December, 1912, rendered in the above-entitled court, and

WHEREAS, the said appellants desire to secure the defendant and petitioner, Frank H. Waskey, in the payment of his costs on appeal,

NOW, THEREFORE, if the above-named appellants shall prosecute the said writ to effect and answer all costs and damages if they fail to make good their plea, and shall pay or cause to be paid to the said defendant and petitioner, Frank H. Waskey, his heirs, executors, administrators and assigns all damages which he shall suffer by reason of said appeal, if the same should be wrongful and without sufficient cause, then this obligation shall be void; otherwise to remain in full force and effect.

J. J. COLE,

WILLIAM A. GILMORE,

Principals.

F. A. DANIELS,

J. A. BACHELDER,

Sureties.

United States of America,
District of Alaska,—ss.

F. A. Daniels and J. A. Bachelder, being first duly sworn, each for himself deposes and says:

I am one of the sureties named in the above under-

taking and am a resident of the District of Alaska; that I am not an attorney at law, marshal, deputy marshal, clerk of any court, or other officer of any court, and am worth the sum of Two Hundred and Fifty (\$250.00) Dollars in property exempt from [116] execution, and over and above all just debts and liabilities.

F. A. DANIELS.

J. A. BACHELDER.

Subscribed and sworn to before me this 11th day of January, A. D. 1913.

[Notarial Seal]

L. W. HAYDEN,

Notary Public in and for the District of Alaska.

Order [Approving Cost Bond.]

The above and foregoing cost bond is hereby approved this 11th day of January, A. D. 1913.

CORNELIUS D. MURANE,

District Judge.

The above and foregoing cost bond and order acknowledged by receipt of a copy, this 11th day of January, 1913.

O. D. COCHRAN,

Of Attorneys for Defendant and Petitioner, Frank H. Waskey.

[Endorsed]: No. 1629. In the District Court for the District of Alaska, Second Division. J. J. Chambers, Plaintiff, vs. Andrew Eadie et al., J. J. Cole, Trustee, and William A. Gilmore, Defendants. Cost Bond and Order. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Jan. 11, 1913. John Sundback, Clerk. By

J. A. B., Deputy. G. J. Lomen and William A. Gilmore, Attorney at Law, Nome, Alaska, Attorney for Respondent and Intervenor. Vol. 5, Civil Bond Record, p. 183. C. [117]

*In the District Court for the District of Alaska,
Second Division.*

No. 1629.

J. J. CHAMBERS,

Plaintiff,

vs.

ANDREW EADIE et al.,

Defendants.

Order Enlarging Time to File Record.

On motion of Messrs. G. J. Lomen and William A. Gilmore, attorneys for J. J. Cole, respondent, and William A. Gilmore, intervenor in the above-entitled cause, and good cause appearing to the Court therefor,

IT IS HEREBY ORDERED that the time for filing and docketing the transcript and record in the above-entitled cause in the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, is hereby extended and enlarged to and until the first day of August, 1913.

Done in open court this 11 day of January, 1913.

CORNELIUS D. MURANE,

District Judge.

Service of the above and foregoing order admitted by receipt of copy this 11th day of January, 1913.

O. D. COCHRAN,
Of Attorneys for Defendant and Petitioner, Frank
H. Waskey.

[Endorsed]: No. 1629. In the District Court for the District of Alaska, Second Division. J. J. Chambers, Plaintiff, vs. Andrew Eadie et al., Defendant. Order Enlarging Time to File Record. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Jan. 11, 1913. John Sundback, Clerk. By J. A. B., Deputy. G. J. Lomen and William A. Gilmore, Attorneys at Law, Nome, Alaska, Attorneys for Respondent and Intervenor. Vol. 10, Orders and Judgments, p. 73. C. [118]

*In the District Court for the District of Alaska,
Second Division.*

No. 1629.

J. J. CHAMBERS,

Plaintiff,

vs.

ANDREW EADIE et al.,

Defendants.

Petition for an Order of Severance.

To the Honorable CORNELIUS D. MURANE,
Judge of the Above-entitled Court:

Come now respondent, J. J. Cole, and intervenor,
William A. Gilmore, and for cause of petition allege:

That on the 15th day of October, 1912, a final order

was made by Honorable Thomas R. Lyons, Judge presiding in the above-entitled Court in the above-entitled action, in favor of defendant Frank H. Waskey and against your petitioners herein, in which said order it was decreed and directed that the respondent, J. J. Cole, pay a certain fund in his possession into the registry of the Court in the above-entitled action, to which said order reference is made for the purpose of this petition.

That at the hearing and trial of said proceedings the plaintiff, J. J. Chambers, consented that said fund be placed in the registry of the Court, and by said action refuses to join in an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from said order so made and entered.

That thereafter, on the —— day of January, 1913, a bill of exceptions was prepared, settled and filed in [119] said action preparatory to the appeal to the United States Circuit Court of Appeals for the Ninth Circuit, and your petitioners herein, J. J. Cole and William A. Gilmore, desire to appeal to said Circuit Court from said final order and desire the Court to make an order of severance allowing and permitting said respondent, J. J. Cole and intervenor, William A. Gilmore, the right to appeal from said order without joining the plaintiff, J. J. Chambers, thereto.

WHEREFORE your petitioners, J. J. Cole and William A. Gilmore, pray for an order granting the right of appeal to them and granting an order of severance barring said plaintiff from said right and

for such other order as the Court may deem proper in the premises.

J. J. COLE.

WILLIAM A. GILMORE.

United States of America,
District of Alaska,—ss.

William A. Gilmore, being first duly sworn, deposes and says:

That I am one of the petitioners named in the foregoing petition; that I have read the same, know the contents thereof, and the same is true as I verily believe.

WILLIAM A. GILMORE.

Subscribed and sworn to before me this 11th day of January, A. D. 1913.

[Notarial Seal]

L. W. HAYDEN,

Notary Public in and for the District of Alaska.

[120]

Service by receipt of copy of foregoing petition for severance admitted this 11th day of January, 1913.

O. D. COCHRAN,

Of Attorneys for F. H. Waskey.

[Endorsed]: No. 1629. In the District Court for the District of Alaska, Second Division. J. J. Chambers, Plaintiff, vs. Andrew Eadie et al., Defendant. Petition for an Order of Severance. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Jan. 14, 1913. John Sundback, Clerk. By J. A. B., Deputy. G. J. Lomen and William A. Gilmore, Attorneys at Law, Nome, Alaska, Attorneys for Respondent and Intervenor [121]

*In the District Court for the District of Alaska,
Second Division.*

No. 1629.

J. J. CHAMBERS,

Plaintiff,

vs.

ANDREW EADIE et al.,

Defendants.

**Order [Granting J. J. Cole et al. Right to Appeal
Without Joining J. J. Chambers, etc.].**

Upon reading and considering the petition of petitioners, J. J. Cole and William A. Gilmore, praying for an order of severance from the plaintiff J. J. Chambers in the matter of the appeal in the above-entitled action, from the final order of the Court made on the 15th day of October, 1912, and it appearing to the Court from the record and proceedings in said action that the plaintiff, J. J. Chambers, has refused to join in the said appeal, and the Court being otherwise fully advised in the premises;

NOW ORDERS AND DIRECTS that the said petitioners, J. J. Cole and William A. Gilmore, be and they are hereby granted the right to appeal without joining the said J. J. Chambers in said appeal.

IT IS FURTHER ORDERED that the usual proceedings may be had and granted to the petitioners, J. J. Cole and William A. Gilmore in the preparation and completion of the said proposed appeal to the Circuit Court of Appeals for the Ninth Circuit.

Dated at Nome, Alaska, this — day of January,
A. D. 1913.

District Judge. [122]

Service acknowledged by receipt of copy this 11th
day of Jany., 1913.

O. D. COCHRAN,
Of Attys. for Waskey.

[Endorsed]: No. 1629. In the District Court for
the District of Alaska, Second Division. J. J. Cham-
bers, Plaintiff, vs. Andrew Eadie et al., Defendant.
Order. Filed in the Office of the Clerk of the Dis-
trict Court of Alaska, Second Division, at Nome.
Jan. 14, 1913. John Sundback, Clerk. By J. A. B.,
Deputy. G. J. Lomen and William A. Gilmore, At-
torneys at Law, Nome, Alaska, Attorneys for Re-
spondent and Intervenor. [123]

*In the District Court, District of Alaska, Second
Division.*

No. —.

J. J. CHAMBERS,

Plaintiff,

vs.

ANDREW EADIE, J. POTTER WHITTREN and
FRANK H. WASKEY,

Defendants.

Verdict.

We, the jury duly empaneled and sworn to try the
above-entitled cause, find for the plaintiff and against

the defendants, and that the plaintiff is the owner in fee and entitled to the possession of an undivided one-half interest in the Bon Voyage Claim, described as follows, to wit:

Commencing at the initial stake which is situated about 1,500 feet in a southerly direction from the upper end line of Creek Claim No. 3 Below on Newton Gulch, a tributary of Dry Creek, said stake being in the north end line of said claim; thence 330 feet in a westerly direction and parallel to said Newton Gulch to corner stake No. 1; thence 1320 feet in a southerly direction and at right angles, to corner stake No. 2; thence 660 feet in an easterly direction to corner stake No. 3; thence 1,320 feet in a northerly direction to corner stake No. 4; thence 330 feet to initial stake or place of beginning; said claim being situated on the divide known as Gold Hill, between Newton Gulch and Nome River, and next to a certain Bench Claim known as Gold Hill Claim No. 1, and containing about twenty acres of placer mining ground.

And we further find that the plaintiff is entitled to damages against the defendants, Andrew Eadie, J. Potter Whittren, and Frank H. Waskey, in the sum of \$20,441.83, Twenty Thousand Four Forty-one 83/100 Dollars.

Dated this 3d day of September, 1907.

FLOYD W. DAVIS,

Foreman.

[Endorsed]: #1629. In the District Court, District of Alaska, Second Division. J. J. Chambers,

Plaintiff, vs. Andrew Eadie, J. Potter Whittren and Frank H. Waskey, Defendants. Verdict. Filed in the Office of the Clerk of the Dist. Court of Alaska, Second Division, at Nome. Sep. 3, 1907. Jno. H. Dunn, Clerk. By ———, Deputy. McB. [124]

*In the District Court for the District of Alaska,
Second Division.*

No. —.

J. J. CHAMBERS,

Plaintiff,

vs.

ANDREW EADIE, J. POTTER WHITTREN and
FRANK H. WASKEY,

Defendants.

Judgment.

This cause having come on for hearing in the above-entitled court on the 26th day of August, 1907, the parties appearing in person and by their respective attorneys, a jury having been duly and regularly empaneled and sworn to try said cause, and after hearing the testimony introduced by plaintiff and defendants, the arguments of counsel for plaintiff and defendants and the instructions of the court, retired to deliberate upon their verdict, and, subsequently, returned into court with the following verdict:

“We, the jury duly empaneled and sworn to try the above-entitled cause, find for the plaintiff and against the defendants, and that the plaintiff is the

owner in fee and entitled to the possession of an undivided one-half interest in the Bon Voyage Claim, described as follows, to wit:

Commencing at the initial stake which is situated about 1,500 feet in a southerly direction from the upper end line of Creek Claim No. 3 Below on Newton Gulch, a tributary of Dry Creek; said stake being in the north end line of said claim; thence 330 feet in a westerly direction and parallel to said Newton Gulch to corner stake No. 1; thence 1,320 feet in a southerly direction and at right angles, to corner stake No. 2; thence 660 feet in an easterly direction to corner stake No. 3; thence 1,320 feet in a northerly direction to corner stake No. 4; thence 330 feet to initial stake or place of beginning; said claim being situated on the divide known as Gold Hill, [125] between Newton Gulch and Nome River, and next to a certain Bench Claim known as Gold Hill Claim No. 1, and containing about twenty acres of placer mining ground.

“And we further find that the plaintiff is entitled to damages against the defendants, Andrew Eadie, J. Potter Whittren, and Frank H. Waskey, in the sum of \$20,441.83, Twenty Thousand Four Forty-one 83/100 Dollars.

Dated this 3d day of September, 1907.

FLOYD W. DAVIS,

Foreman.”

THEREAFTER, the said defendants by their attorneys filed a motion for a new trial to set aside the verdict of the jury, which said motion was submitted

to the Judge of the above-entitled court and was by the Court, prior to this date, overruled and denied.

And, whereas, heretofore under a stipulation signed by the attorneys for the respective parties, the following order was made by the Court:

“On reading and filing the foregoing stipulation, it is hereby ordered that the Miners and Merchants’ Bank of Alaska be authorized to cause the gold-dust deposited with it subject to the order of the Court in this action to be melted, assayed and shipped to the Assay Office in Seattle, Washington, and the said Bank is hereby directed to hold the proceeds thereof, less the usual charges, subject to the order of the court.”

Dated Nome, Alaska, June 5th, 1907.

ALFRED S. MOORE,
Judge District Court, District of Alaska, Second
Division.

NOW, THEREFORE, by reason of the law and premises it is hereby ordered and adjudged that the plaintiff is the owner in fee and entitled to the possession of an undivided one-half ($1\frac{1}{2}$) interest of, in and to that certain placer mining claim situate in the Cape Nome Recording District, District of Alaska, known and named the Bon Voyage Claim, particularly described [126] as follows, to wit:

Commencing at the initial stake which is situated about 1,500 feet in a southerly direction from the upper end line of Creek Claim No. 3 Below on Newton Gulch, a tributary of Dry Creek, said stake being in the north end line of said claim; thence 330 feet in a westerly direction and parallel to said Newton

Gulch to corner stake No. 1; thence in a southerly direction and at right angles to corner stake No. 2; thence 660 feet in an easterly direction to corner stake No. 3; thence 1,320 feet in a northerly direction to corner stake No. 4; thence 330 feet to the initial stake or place of beginning; said claim being situated on the divide known as Gold Hill between Newton Gulch and Nome River and containing about twenty acres of placer mining ground. And that said defendants are not the owners or entitled to the possession of said interest in said claim or any part thereof, and that plaintiff has been damaged by said defendants Andrew Eadie, J. Potter Whittren and Frank H. Waskey by the withholding of possession of said premises from plaintiff and extracting gold therefrom, and it is further ordered and adjudged that plaintiff have and recover of and from said Andrew Eadie, J. Potter Whittren and Frank H. Waskey and each of them judgment in the sum of Twenty Thousand Four Hundred and Forty-one Dollars and Eighty-three cents (\$20,441.83), and the costs and disbursements of this action.

It is further ordered and adjudged that the Miners and Merchants' Bank pay into the registry of this court to the clerk thereof, to be applied upon the foregoing judgment and proceeds of the gold-dust melted and assayed under the order of this Court hereinbefore set out, and that execution may issue to carry this judgment into effect.

Done and dated in open court on this 12th day of October, 1907.

ALFRED S. MOORE,
Judge District Court, District of Alaska, Second
Division. [127]

[Endorsed]: No. 1629. In the District Court, District of Alaska, Second Division. J. J. Chambers, Plaintiff, vs. Andrew Eadie et al., Defendants. Judgment. Filed in the Office of the Clerk of the Dist. Court of Alaska, Second Division, at Nome. Oct. 12, 1907. Jno. H. Dunn, Clerk. By ———, Deputy. Vol. 5, Orders and Judgments, p. 499. Comp. ———, Attorneys for Plaintiff. J. D. 2, Page 40. McB. [128]

UNITED STATES OF AMERICA.

District Court, District of Alaska, 2d Division.

Cause No. 1629.

J. J. CHAMBERS,

Plaintiff,

vs.

ANDREW EADIE et al.,

Defendants.

J. J. COLE,

Trustee.

WILLIAM A. GILMORE,

Intervenor.

Praeipce [for Transcript on Appeal].

To the Clerk of the Above-entitled Court:

You will please include in Transcript on Appeal

with the Bill of Exceptions a copy of original second amended complaint, answer of Waskey, and reply thereto, written Order of Court Oct. 29th, 1909, the mandates in this case. Also the Petition and Order to Show Cause filed by Waskey, the Demurrer by Cole, Answers of Cole & Gilmore and Replies thereto. Also the Findings, Opinion and Order of the Court. Also the Petition for Severance and Order of Severance, with all the appeal papers, and a copy of all court minutes and exceptions. Also Verdict and Judgment.

G. J. LOMEN and
WILLIAM A. GILMORE,
Attorneys for Trustee and Intervenor.

[Endorsed]: Cause No. 1629. District Court, District of Alaska, 2d Division. J. J. Chambers, Plaintiff, vs. Andrew Eadie et al., Defendant. Praecipe. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Jan. 14, 1913. John Sundback, Clerk. By J. A. B., Deputy. [129]

**[Certificate of Clerk U. S. District Court to
Transcript of Record.]**

*In the District Court for the District of Alaska,
Second Division.*

No. 1629.

J. J. CHAMBERS,

Plaintiff,

vs.

ANDREW EADIE, J. POTTER WHITTREN and
FRANK H. WASKEY,

Defendants.

J. J. COLE, Trustee,

Respondent.

WILLIAM A. GILMORE,

Intervenor.

I, John Sundback, Clerk of the District Court of Alaska, Second Division, do hereby certify that the foregoing typewritten pages, from 1 to 129, both inclusive, are a true and exact transcript of the Second Amended Complaint, Answer of Waskey to Second Amended Complaint, Reply to Answer of Defendant Waskey, Mandate under Rule 32 from United States Circuit Court of Appeals for the Ninth Circuit, Order of Court of October 29, 1909, Mandate from Supreme Court of the United States, Court Minutes of September 2, 1912, in re Petition and Order to Show Cause, Petition for Order to Show Cause, Order to Show Cause, Court Minutes September 3, 1912, Hearing on Order to Show Cause,

Demurrer to Petition of Frank H. Waskey, Answer of J. J. Cole to Petition of Frank H. Waskey, Answer of William A. Gilmore, Intervenor, to the Petition of Defendant Frank H. Waskey, Reply to Answer of J. J. Cole, Reply to Answer of Intervenor, William A. Gilmore, Court Minutes of September 4, 1912, Hearing on Order to Show Cause continued, Findings of Fact and Conclusions of Law, Opinion of the Court, Order filed December 20, 1912, Bill of Exceptions, Court Minutes December 28, 1912, Bill of Exceptions set for hearing, Court Minutes January 4, 1913, Settlement Bill of Exceptions continued, Court Minutes January 11, 1913, in re Bill of Exceptions, Court Minutes January 14, 1913, Bill of Exceptions settled and allowed, Assignment of Errors, Petition for an Order Allowing Appeal, [130] Order allowing Appeal and fixing Amount of Cost Bond, Cost Bond and Order, Order Enlarging Time to File Record, Petition for an Order of Severance, Order of Severance, Verdict, Judgment, and Praecipe for Transcript on Appeal, in the case of J. J. Chambers, Plaintiff, vs. Andrew Eadie et al., Defendants, J. J. Cole, Respondent, William A. Gilmore, Intervenor, No. 1629-Civil, this court, and of the whole thereof, as appears from the records and files in my office at Nome, Alaska; and further certify that the original Citation in the above-entitled cause is attached to this transcript.

Cost of transcript \$51.65, paid by William A. Gilmore, of attorneys for respondent and intervenor.

IN WITNESS WHEREOF, I have hereunto set

my hand and affixed the seal of said Court this 3d day of March, A. D. 1913.

[Seal]

J. SUNDBACK,
Clerk. [131]

*In the District Court for the District of Alaska,
Second Division.*

No. 1629.

J. J. CHAMBERS,

Plaintiff,

vs.

ANDREW EADIE, J. POTTER WHITTREN and
FRANK H. WASKEY,

Defendants.

WILLIAM A. GILMORE,

Intervenor.

J. J. COLE,

Trustee.

Citation [on Appeal—Original].

United States of America,

District of Alaska,—ss.

The President of the United States of America, to
the Defendant and Petitioner, Frank H.

Waskey, in the Above-entitled Action, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held in the city of San Francisco, State of California, within thirty (30) days from the date of this citation, on the 10th day of February, A. D. 1913, pursuant to an order allow-

ing appeal, entered in the office of the clerk of the United States District Court, District of Alaska, Second Division, from the final order of said Court made on the 15th day of October, 1912, and entered on the 20th day of December, 1912, in this certain suit wherein you, the said Frank H. Waskey are a defendant and petitioner, and J. J. Cole a respondent, and William A. Gilmore an intervenor, to show cause, if any there be, why the said final order made and rendered against said respondent and intervenor above named, as in said order allowing [132] appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States of America, this 11th day of January, A. D. 1913, and of the Independence of the United States the one hundred and thirty-seventh.

CORNELIUS D. MURANE,

District Judge.

Attest my hand and seal of the United States District Court for the District of Alaska, Second Division, at the Clerk's Office at Nome, Alaska, this 11th day of January, A. D. 1913.

[Seal]

J. SUNDBACK,

Clerk of the United States District Court, for the District of Alaska, Second Division.

By J. Allison Bruner,

Deputy. [133]

Service by receipt of copy of foregoing citation is admitted this 11th day of January, 1913.

O. D. COCHRAN,
Of Attorneys for Petitioners. [134]

[Endorsed]: No. 1629. In the District Court for the District of Alaska, Second Division. J. J. Chambers, Plaintiff, vs. Andrew Eadie et al., Defendants. Citation. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome. Jan. 11, 1913. John Sundback, Clerk. By J. A. B., Deputy.

[Endorsed]: No. 2271. United States Circuit Court of Appeals for the Ninth Circuit. J. J. Cole, Trustee, and William A. Gilmore, Intervenor, Appellants, vs. Frank H. Waskey, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the District of Alaska, Second Division.

Filed May 3, 1913.

FRANK D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.